



Agenda

Greenville City Council

August 9, 2021

6:00 PM

City Hall Council Chambers, 200 West 5th Street

Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

- I. Call Meeting To Order**
- II. Invocation - Council Member Litchfield**
- III. Pledge of Allegiance**
- IV. Roll Call**
- V. Approval of Agenda**
- VI. Public Comment Period**

The Public Comment Period is a period reserved for comments by the public. Items that were or are scheduled to be the subject of public hearings conducted at the same meeting or another meeting during the same week shall not be discussed. A total of 30 minutes is allocated with each individual being allowed no more than 3 minutes. Individuals who registered with the City Clerk to speak will speak in the order registered until the allocated 30 minutes expires. If time remains after all persons who registered have spoken, individuals who did not register will have an opportunity to speak until the allocated 30 minutes expires.

VII. Special Recognitions

- 1. 8-10 Tar Heel Little League Baseball Team - State Champions

2. 10-11 North State Little League Baseball Team - State Champions

VIII. Consent Agenda

3. Minutes from the May 13, 2021; May 24, 2021; and June 7, 2021 City Council Meetings
4. Amend the Policy on the Conditional Service, Sale, and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Department Parks and Facilities to Include Wildwood Park, and Amend the associated City Ordinance
5. Resolution authorizing a lease agreement with Vietnam Veterans of America, George F. Semick Chapter #272, for the property and improvements known as the Old Police Hut located at 2805 East Second Street, being a portion of Tax Parcel #28980
6. Encroachment Agreement with Greenville Ventures NC, LLC at 120 East Fourth Street
7. Encroachment Agreement with William Lester Johnson, Jr., and Knotty Props, LLC, as Tenants in Common at 501 Evans Street
8. Acquisition of Property at 110 Greenbriar Drive for Stormwater Purpose
9. Contract for Services with Uptown Greenville
10. Budget Ordinance Amendment and Reimbursement Resolution for Greenville Utilities Commission's Electric Capital Project Point of Delivery #3 to Simpson Substation Transmission Loop
11. Various tax refunds greater than \$100

IX. New Business

Public Hearings

12. Application to receive funds from the Edward Byrne Memorial Justice Assistance Grant Program

Other Items of Business

13. Amendment to Development Agreement Between the City of Greenville and Greenville Ventures NC, LLC for the Development of a Hotel on Evans Street in Uptown Greenville
14. Contract award to Communications International, Inc. for the purchase and installation of Public Safety P25 Subscriber Radios and Services
15. Contract award to Muter Construction for the construction of Fire/Rescue Station 7 at 4170 Bayswater Road

16. Resolution Making Certain Findings and Determinations Regarding the Financing of Public Improvements Pursuant to an Installment Financing Agreement up to \$21,000,000 and to Reimburse Certain Expenditures from the Proceeds of the Financing
17. Budget Ordinance Amendment #1 to the 2021-22 City of Greenville Budget (Ordinance #21-035), Special Revenue Grant Fund (Ordinance #11-003), and Capital Projects Funds (Ordinance #17-024)

X. Review of August 12, 2021 City Council Agenda

XI. City Manager's Report

XII. Comments from Mayor and City Council

XIII. Adjournment





City of Greenville,
North Carolina

Meeting Date: 08/09/2021

<u>Title of Item:</u>	Minutes from the May 13, 2021; May 24, 2021; and June 7, 2021 City Council Meetings
<u>Explanation:</u>	Minutes from the City Council's May 13, 2021 and May 24, 2021 meetings are attached for review and approval.
<u>Fiscal Note:</u>	No direct fiscal impact.
<u>Recommendation:</u>	Review and approve the minutes from the City Council's May 13, 2021 and May 24, 2021 meetings.

ATTACHMENTS

-  [Proposed May 13 2021 Minutes.pdf](#)
-  [Proposed May 24 2021 Minutes.pdf](#)

PROPOSED MINUTES
CITY COUNCIL MEETING
CITY OF GREENVILLE, NORTH CAROLINA
THURSDAY, MAY 13, 2021



A meeting of the Greenville City Council was held on Thursday, May 13, 2021, electronically via Zoom, with Mayor P.J. Connelly presiding. Mayor Connelly called the meeting to order at 6:00 p.m. The invocation was led by Council Member Meyerhoeffer and was followed by the Pledge of Allegiance.

Those Present:

Mayor P.J. Connelly, Mayor Pro-Tem Rose Glover, Council Member Monica Daniels, Council Member Will Bell, Council Member Rick Smiley, and Council Member Brian Meyerhoeffer, Jr.

Those Absent:

Council Member William Litchfield, Jr.

Also Present:

City Manager Ann E. Wall, City Attorney Emanuel McGirt, City Clerk Valerie Shiuwegar, Deputy Clerk Camillia Smith, Assistant City Manager Michael Cowin, Assistant City Manager Ken Graves

Approval of the Agenda

Council Member Smiley made a motion to approve the agenda as presented. Council Member Daniels seconded the motion and it carried unanimously.

Public Comment Period

Mayor Connelly opened the public comment period at 6:04 p.m., explaining the public comment procedures.

Mr. Israel Mueller

Mr. Mueller stated that he is a member of the Historic Preservation Commission (HPC) and that he was present to support the Anti-Demolition by Neglect item that would introduced later on the agenda.

Mr. Justin Edwards

Mr. Edwards stated that he was present as a member of the HPC in support of the Anti-Demolition by Neglect item.

Mr. Jeremy Jordan

Mr. Jordan stated that he is the Chair of the HPC and he was present to answer any questions that may come up for the Anti-Demolition by Neglect item.



Ms. Candace Pearce

Ms. Pearce had some connectivity issues and requested that the City Clerk read a message in place of her comments:

“Mr. Mayor and Council Members

Please accept the Resolution of this Commission, Item 11, and ask staff to return with an Ordinance for your consideration.

Very sincerely,

Candace”

Mr. Myron Caspar

Mr. Caspar stated that he is a member of the Historic Preservation Commission (HPC) and that he was present to support the Anti-Demolition by Neglect item. He stated that there was a nice older house in the College View Neighborhood that had been demolished years ago and if there had been an Anti-Demolition by Neglect ordinance in place, the demolition could have possibly been avoided.

There being no additional registered speakers and no further public comment received in the public input inbox, Mayor Connelly closed the public comment period at 6:14 p.m.

Special Recognitions

City Retiree

City Manager Wall recognized Mr. Gary Fenton on his retirement with the City of Greenville. Mr. Fenton had served for 14 years as the City’s Recreation and Parks Director and over fifty years in recreation and parks overall. She listed numerous facilities, parks, and programs that had been implemented under his leadership. Manager Wall stated his humor, work ethic, and dedication had made him a valuable member of the City’s team.

Mr. Fenton stated that he appreciated the City Council’s recognition and support and the 14 years that he has been with the City. He further stated his appreciation for his supportive staff.

Mayor Connelly and the City Council commended Mr. Fenton for his years of service to the community.

Appointments

The following appointments were made to the City’s boards and commissions:

Environmental Advisory Commission



Council Member Meyerhoeffer made a motion to appoint Thomas Trevathan to the board. Council Member Smiley seconded the motion and it carried unanimously.

Human Relations Council

Mayor Pro-Tem Glover made a motion to appoint Kevin Cruz Torres. Council Member Smiley seconded the motion and it carried unanimously.

Pitt-Greenville Convention & Visitors Authority

Council Member Meyerhoeffer made a motion to appoint Chamika Campbell-White to a City seat and recommend to the Pitt County Board of Commissioners that Christie Jahn be appointed to a County seat. Council Member Smiley seconded the motion and it carried unanimously.

Recreation & Parks Commission

Council Member Smiley made a motion to reappoint Gordon Darragh. Council Member Daniels seconded the motion and it carried unanimously.

Council Member Daniels made a motion to reappoint Darin White to the Commission. Council Member Smiley seconded the motion and it carried unanimously.

All remaining appointments were continued to the next month.

New Business

3.) ORDINANCE TO ANNEX THE CLYN W. BARBER AND EDNA P. BARBER PROPERTY INVOLVING 1.580 ACRES LOCATED ALONG THE SOUTHERN RIGHT-OF-WAY OF DICKINSON AVENUE EXTENSION AND 1,180 +/- FEET SOUTHWEST OF FROG LEVEL ROAD - *PUBLIC HEARING HELD AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; ACTION SCHEDULED TO BE TAKEN ON MAY 17, 2021 AT 6:00 P.M*

Chief Planner Chantae Gooby delineated the area and provided an overview of the request. She stated that the existing land use is for CW's Auto Sales and the anticipated use would continue to be used for CW's Auto Sales.

Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 6:31 p.m. and invited speakers in favor of the request to come forward. There being no speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the request in the Public Input mailbox, Mayor Connelly closed the public hearing at 6:32 p.m. and called for board discussion.



Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public.

4.) ORDINANCE REQUESTED COLLICE MOORE, JR. TO REZONE 1.4854 ACRES LOCATED AT THE NORTHWESTERN CORNER OF THE INTERSECTION OF DIAMOND DRIVE AND SAPPHIRE COURT FROM IU (UNOFFENSIVE INDUSTRY) TO CH (HEAVY COMMERCIAL) - *PUBLIC HEARING HELD AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; ACTION SCHEDULED TO BE TAKEN ON MAY 17, 2021 AT 6:00 P.M*

Chief Planner Gooby provided an overview of the request to the City Council. She stated that based on the permitted uses under the request, there is a potential of 100 trips to and from the site on Martin Luther King, Jr. Highway, netting a potential increase of an additional 50 trips per day. She stated that the site will allow for 14,000 sq. feet of warehouse space under the current zoning and will allow for 3,000 sq. feet of automotive sales under the requested zoning. She stated that the Planning & Zoning Commission voted to recommend approval of the request at its April 27, 2021, meeting. She stated staff's recommendation to approve the request.

Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 6:35 p.m. and invited speakers in favor of the request to come forward.

Mr. Scott Bumgarner

Mr. Bumgarner, representative of the applicant, stated that he was present to answer any questions that the City Council might have.

There being no additional speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the request in the Public Input mailbox, Mayor Connelly closed the public hearing at 6:37 p.m. and called for board discussion.

Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public

5.) ORDINANCE REQUESTED BY MQ CONSTRUCTION, LLC TO REZONE 2.385 ACRES LOCATED BETWEEN DICKINSON AVENUE AND SW GREENVILLE BOULEVARD AND 600 +/- FEET WEST OF WILLIAMS ROAD FROM RA20 (RESIDENTIAL-AGRICULTURAL) TO R6 (RESIDENTIAL [HIGH DENSITY MULTI-FAMILY]) - *PUBLIC HEARING HELD AND MEETING WAS RECESSED TO ALLOW*



PUBLIC COMMENT 24 HOURS AFTER THE HEARING; ACTION SCHEDULED TO BE TAKEN ON MAY 17, 2021 AT 6:00 P.M

Chief Planner Gooby provided an overview of the request to the City Council. She stated that due to the small size of the property, a traffic report was not generated. She stated that the site will allow for 5 single-family lots under the current zoning and will allow for 5-10 multi-family units under the requested zoning. She stated that the Planning & Zoning Commission voted to recommend approval of the request at its April 27, 2021, meeting. She stated staff's recommendation to approve the request.

Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 6:41 p.m. and invited speakers in favor of the request to come forward. There being no speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the request in the Public Input mailbox, Mayor Connelly closed the public hearing at 6:42 p.m. and called for board discussion.

Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public.

6.) ORDINANCE REQUEST BY MICHAEL BIRCH, LONGLEAF LAW PARTNERS TO AMEND TITLE 9, CHAPTER 4, ARTICLE E, SECTION 9-4-86 (MM-1) DORMITORY DEVELOPMENT WITHIN THE CDF-UC DISTRICT OF THE CITY CODE BY DELETING "9-4-86 (MM-1)(2) DORMITORY DEVELOPMENT WITHIN THE CDF-UC DISTRICT SHALL PROVIDE RETAIL SALES AND/OR OTHER NON-RESIDENTIAL USES WITH A MINIMUM FLOOR AREA OF 10,000 SQUARE FEET. FOR PURPOSES OF THIS REQUIREMENT, THE TERM FLOR AREA SHALL MEAN NON-STORAGE AREA WHICH IS USED AS RETAIL SALES, OR OTHER NON-RESIDENTIAL USES. WHERE ARCHITECTURAL LAYOUTS ARE NOT AVAILABLE FOR CONSIDERATION, THE FLOOR AREA WILL BE CALCULATED BY MULTIPLYING 80% TIMES THE GROSS AREA DESIGNATED AS NON-RESIDENTIAL USE UNTIL SUCH TIME ARCHITECTURAL LAYOUTS ARE AVAILABLE FOR CONSIDERATION OR OCCUPANCY HAS COMMENCED, WHICHEVER IS EARLIER." - *PUBLIC HEARING HELD AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; ACTION SCHEDULED TO BE TAKEN ON MAY 17, 2021 AT 6:00 P.M*

Chief Planner Gooby provided an overview of the request to the City Council. She briefly provided background on the creation of the Urban Core Overlay District, stating its creation in 2010 with the intent of encouraging in-fill development and more buildable space in the general area located south of the East Carolina University (ECU) Main Campus. In 2016, the District was amended to allow dormitory development as a special use in the CDF district in exchange



for the developer providing non less than 10,000 square feet of “non-residential uses” and the minimum floor area for one bedroom units had been reduced from 650 sq. ft. to 200 sq. ft. and two bedroom units from 1,000 sq. ft. to 400 sq. ft.

Chief Planner Gooby noted that the standards had been crafted to provide high density for the developers while also benefiting the City by furthering the vision and the principles of the Horizons Plan.

The applicant’s request would delete the following from the City Code, Title 9, Chapter 4, Article E, Section 9-4-86 (MM) (1) and (2) and remove the 10,000 square foot requirement.

Chief Planner Gooby noted that there had been a discrepancy in the staff report and clarified that the Planning & Zoning Commission had voted to deny the request by a vote of 6:2. She further stated that staff also recommended that the City Council deny the request.

Council Member Smiley asked if the applicant had considered modifying the square foot requirement rather than taking it out entirely.

Chief Planner Gooby stated that there had been some discussion at the Planning & Zoning Commission but the applicant decided to move forward with the request as it was.

Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 6:55 p.m. and invited speakers in favor of the request to come forward.

Mr. Michael Birch

Mr. Birch, with Longleaf Law Partners, spoke on behalf of the applicant. He stated that they are requesting to remove the requirement to provide a minimum 10,000 sq. feet of non-residential uses for the safety and security of student residents because some of the uses would have to be made available to the public, which could be a potential health and safety risk to residents while dealing with a pandemic. He stated that market trends in the retail industry have changed, decreasing in demand, since the requirement was adopted in 2016. He stated that the area faced an issue with retail vacancy prior to the pandemic, but the issue had been exacerbated by the pandemic. He stated that a recent survey had found that there is 70,000 sq. feet of vacant retail within a half mile of the Jolly Roger site. He stated that the proposed text change would only apply to the Proximity at 10th, and the Jolly Roger, because they were the only properties that had gone through the rezoning process to change the base district to CDF, add the Urban Core overlay, and then seek a special use permit for dormitory development. He stated that the request would only remove the requirement to provide 10,000 sq. feet of non-residential space, but it does not limit the ability to provide this space. He stated his opinion that the request is consistent with the City’s plans.

Addressing Council Member’s Smiley’s question to staff, Mr. Birch stated that rather than changing the request, they wanted to move the request along to have this discussion with the City Council.



Mayor Connelly noted that Mr. Birch had gone slightly over the ten minute limit, but had technically used less than ten minutes on his comments to the City Council because he answered a question for Council Member Smiley.

Council Member Smiley stated that the request seemed like it was written to suit the needs of the applicant's property rather than the needs of the district.

Mr. Birch stated he was involved in one specific project but he does believe that this proposed text change has broad application in terms of serving more than just the Jolly Roger project. He stated that his client has had conversations with other developers in the city who have gone through similar processes where retail space was required, but they had not further discussed what number would be appropriate for all of them.

Council Member Smiley asked what danger the public would pose by entering into the building.

Mr. Birch stated that from a public interest standpoint, the idea of having high density development generally in this location is a positive for the public. To be able to locate more potential customers in a walkable distance to Uptown and downtown commercial, but it is not in the public's interest to add more vacant retail space that will compete with the commercial core to the north. He stated that the safety concern with the public deals with security and access, which will be different than a standard multi-family unit because it will be dealing with students.

Council Member Smiley stated that the issue of access is one that should have been addressed with the architect since they knew that there was 10,000 sq. feet of retail space that would need to be accessed by the public.

Mr. Birch stated that this is an interpretation issue that had come up in talks with City staff. He stated that the code states the requirement for 10,000 sq. feet of non-residential space, but does not require that the space be open to the public. He stated that the space in the Jolly Roger had initially not been intended to be open to the public, but the differences in interpretation would require that they go before the Board of Adjustment or that they get to the point that they needed to in the process and solve it in a different way.

Council Member Smiley stated the interpretation issue should have been discussed between the client and the client's attorney.

Mr. Birch clarified and stated that they had a disagreement with City staff regarding the interpretation of the requirements and the developer had opted to explore options on the development path rather than disputing the interpretation through a legal process.



Council Member Smiley asked staff when it became clear that what the requestor wanted to do was not in compliance with the requirement.

Chief Planner Gooby stated that there had been a discussion when the requestor submitted a site plan, which may have been late 2018 – early 2019. The discussion had focused on the non-residential requirement and staff had asked specific questions about what they intended to put in that area. She stated that the requestor stated that they did not have any specifics at that time. She stated that during that discussion, staff had informed them that the space would have to be open to the public. She stated that she had not had any further discussions until she had received the current request to amend the code by deleting that requirement.

There being no additional speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There were no speakers at the meeting in opposition to the item. City Clerk Shiuwegar noted that there had been one message that was received in opposition prior to the meeting and it had been forwarded to the City Council. She stated that there were no additional messages in opposition of the request in the Public Input mailbox. Mayor Connelly closed the public hearing at 7:20 p.m. and called for board discussion.

Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public.

7.) ORDINANCE TO DESIGNATE THE FLANAGAN-WAGNER HOUSE, LOCATED AT 903 EAST 5TH STREET AND FURTHER IDENTIFIED AS PITT COUNTY PARCEL NUMBER 14352, AS A LOCAL HISTORIC LANDMARK - *PUBLIC HEARING HELD AND RECESSED TO MAY 17, 2021 AT 6:00 P.M. TO ALLOW 24 HOURS FOR ADDITIONAL PUBLIC INPUT FOLLOWING THE HEARING*

Chief Planner Gooby stated that the home was constructed in 1938 and that the Flanagan and Wagner families had been prominent families in Greenville. She stated that family land had become the home to a hospital, part of the East Carolina University (ECU) campus and the College View neighborhood. She stated that the Flanagan-Wagner House is an intact example of the early 20th century Tudor Revival style, making it significant because of its architecture in addition to its significance because of persons who had lived there.

She stated that the homeowners had gone through the appropriate process with the Historic Preservation Commission's (HPC) Selection Committee and the HPC, and had been advised by the State Historic Preservation Office (SHPO) that the House has the requisite special significance and integrity for designation.



Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 7:25 p.m. and invited speakers in favor of the request to come forward.

Ms. Sara Larkins

Ms. Larkins, the property owner, stated her appreciation that her home was being considered for a local landmark designation because of all of the work that had been put in to restore the home.

Council Member Smiley expressed his appreciation to Ms. Larkins for sharing the history of her home with the city.

There being no additional speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the request in the Public Input mailbox, Mayor Connelly closed the public hearing at 7:28 p.m. and called for board discussion.

Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public.

8.) PUBLIC HEARING FOR THE 2021-2022 ANNUAL ACTION PLAN FOR CDBG AND HOME FUNDS - *PUBLIC HEARING HELD AND RECESSED TO MAY 17, 2021 AT 6:00 P.M. TO ALLOW 24 HOURS FOR ADDITIONAL PUBLIC INPUT FOLLOWING THE HEARING*

Senior Planner Tiana Berryman presented the 2021-2022 Annual Action Plan to the City Council. She stated that this is the fourth plan in the City's 2018-2022 Five Year Consolidated Plan. She stated that there is a slight increase in Community Development Block Grant (CDBG) funding and consistent allocations in the HOME Investment Partnership Program for a total of \$1,556,089 in award amounts for the two grants. She noted that CARES funds had been received late in the cycle so activities related to those funds would not be reflected until later in the year. She stated that the top priorities of the plan include: owner-occupied rehabilitation, education and non-profit support, community development organization (CHDO) activities, down payment assistance, and new housing construction.

There being no speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the request in the Public Input mailbox, Mayor Connelly closed the public hearing at 7:28 p.m. and called for board discussion.

Other Items of Business



9.) PRESENTATION OF THE PROPOSED FISCAL YEAR 2021-22 OPERATING BUDGETS FOR THE PITT-GREENVILLE CONVENTION & VISITORS AUTHORITY, SHEPPARD MEMORIAL LIBRARY, AND GREENVILLE UTILITIES COMMISSION – **PRESENTATIONS HEARD**

Representatives from the Pitt-Greenville Convention & Visitors Authority, Sheppard Memorial Library, and the Greenville Utilities Commission provided proposed budgets for the 2021-2022 FY.

Pitt-Greenville Convention & Visitors Authority

Mr. Andrew Schmidt, President and CEO of the Pitt-Greenville Convention & Visitors Authority (CVA), provided the CVA’s proposed budget to the City Council. He stated there had been drops in occupancy, average daily rate (ADR), and revenue per available room (REVPAR) due to the pandemic. He stated that the past year has been a challenge, but survey numbers indicate that the attitude towards travel is shifting especially as more people are vaccinated.

He stated that the CVA receives revenue solely from the hotel/motel occupancy tax as well as back tax from Airbnb’s, both of which have significantly declined due to the pandemic. He stated that the 2021-22 FY budget had been calculated with an estimated 22% decrease in occupancy tax collections. He noted that collections are anticipated to be higher this spring than last spring and ADR and REVPAR numbers have begun to rebound.



FY 2021-2022 Budget

FY 2020-2021 budget set at: \$1,375,450

Occupancy Tax Collections: \$775,000

Capital Reserve/Sports Commission: \$300,000

Capital Reserve/CVB \$125,000

PPP Forgivable loan \$100,000

Fund Balance: \$75,000*

Miscellaneous Revenue: \$450.00

He stated that the 2021-2022 FY Budget Highlights include:

- 5 full time equivalents/3 part-time staff
- Increase in allocated dollars for advertising and marketing to match pre-pandemic levels
- Increase in sales related line items to match pre-pandemic levels



- Limited sponsorship dollars compared to sponsorship dollars in 2019

He stated \$258,333 has been budgeted to support to the Greenville Convention Center (GCC). He stated that the Convention Center’s total budget was \$385,288 but the GCC will utilize market reserve to make up the difference between projection and total budgets.

Sheppard Memorial Library

Mr. Greg Needham, Director of Libraries, presented the Sheppard Memorial Library’s proposed 2021-2022 FY budget to the City Council. He stated that there have been some challenges due to the pandemic, but there have been some silver linings, such as adding new services, like curbside pickup and virtual programming, that can be kept beyond the pandemic.

Mr. Needham stated the City of Greenville revenue request is \$1,367,510 and he provided an overview of the 2021-22 FY anticipated revenues and expenditures.

	Revenues	FY 21-22
	City of Greenville	\$1,367,510
	Pitt County	\$621,684
	Pitt County-Bethel/Winterville	\$12,000
	Town of Bethel	\$21,108
	Town of Winterville	\$163,500
	State Aid	\$196,483
	Desk Receipts	\$28,000
	Interest Income	\$11,000
	Miscellaneous Income	\$8,500
	Greenville Housing Authority	\$10,692
	Capital-County-HVAC	\$75,000
	Capital-County-Slate Roof	\$20,000
Fund Balance	<u>\$8,095</u>	
Total Income	\$2,543,572	
	Expenditures	FY 21-22
	Personnel	\$1,551,236
	Operations	\$881,644
	Greenville Housing Authority	\$10,692
	Capital: HVAC	<u>\$100,000</u>
	Total	\$2,543,572



He noted partnerships with other municipalities in the County and the Greenville Housing Authority that provide library services to those areas. He stated that the funding would provide for the replacement of units that are 20+ years old at Sheppard Memorial Library, East Branch Library, and Carver Library, which would bring the facilities into compliance with ozone layer requirements.

Greenville Utilities Commission

Mr. Tony Cannon, General Manager/CEO of the Greenville Utilities Commission (GUC), presented GUC’s proposed 2021-2022 FY budget to the City Council. He stated that budget goals include avoiding future rate shock, maintaining a good financial position for the next fiscal year, and being prepared for both growth opportunities and emergency situations as they arise. He presented strong performance indicators for combined funds and stated that there are no proposed rate increases for electric, water, sewer, and gas. He provided an overview of each fund, capital projects, debt service, and personnel needs.

During the presentation, he noted that 75% of City lights have transitioned over to LED lighting and all new lights and light replacements would be LED beginning July 1st. He also stated that the GUC Board had approved a recommended change to employ seasonal gas rates to better align revenues and expenses.

FY 2021-22 Recommended Budget Revenues & Expenditures		Greenville Utilities
Combined Funds	2021-22	
Charges for Service		\$260,335,714
Miscellaneous Revenue & Interest Earnings		2,693,564
Transfer from Rate Stabilization		2,500,000
	Total Revenues	\$265,529,278
Operations		\$75,742,640
Purchased Power/Gas		150,180,079
Capital Outlay		12,704,156
Debt Service		13,122,352
City Turnover		6,579,431
Transfer to OPEB Trust		500,000
Transfer to Rate Stabilization		650,000
Transfer to Capital Projects		5,500,000
	Total Expenditures	\$264,978,658
Fund Equity/(Deficit)		\$550,620



Key Provisions in Preliminary FY 2021-22 Budget (cont'd)

- Growth in Number of Connections
 - Electric – 1.50%
 - Water – 1.25%
 - Sewer – 1.40%
 - Gas – 0.65%
- Annual turnover or transfer of \$6,579,431 to the City of Greenville
- Continuing support of Greenville-ENC Alliance as a Sustaining Member - \$500,000
- Continuing support of City's Housing Energy Conservation Program - \$150,000
- Transfer of \$2,500,000 from electric rate stabilization fund
- Infrastructure maintenance and expansion
 - \$12.7M investment in annual capital outlay
 - Transfer of \$6.75M to capital projects fund
 - Debt service to support investment

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Key Provisions in Preliminary FY 2021-22 Budget (cont'd)

Personnel

- Funding for a 2.0% employee merit/market adjustment, \$612K
- Continuation of health and dental plans
- \$500K transfer to OPEB Trust
- Funding for increase in LGERS employer contribution from 10.15% to 11.35% - \$418K
- Funding to bring replacements on board prior to the retirement of key personnel
 - Facilitate succession planning
 - Leverage knowledge and experience of long-term employees for training on critical issues
 - Ensure smooth transitions

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Key Provisions in Preliminary FY 2021-22 Budget (cont'd)

Personnel (cont'd)

- Addition of 2 permanent positions

Department	New Position
Finance Administration	Controller
Human Resources	Part-time Wellness Intern

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10.) CHAPTER 160D: A NEW LAND USE LAW FOR NORTH CAROLINA –
PRESENTATION HEARD

Chief Planner Gooby provided an overview of the upcoming changes to land use laws in North Carolina. She stated that the changes are being made to consolidate, reorganize, and adopt consensus reforms, making the new rules more intuitive and easier to follow. She stated that the updates will simplify consistency statements, standardize definitions, update archaic language, and clarify types of decisions.

Chief Planner Gooby stated that the new rules have been passed down for each county or municipality to adopt and follow by July 1, 2021. She stated that the plan will go before the Planning & Zoning Commission this month and come back before the City Council for a public hearing in June.

11.) HISTORIC PRESERVATION COMMISSION’S RESOLUTION FOR AN ANTI-DEMOLITION BY NEGLECT ORDINANCE – **MOTION TO DIRECT STAFF TO WORK WITH THE HPC ON A PRESENTATION TO BRING BACK TO THE CITY COUNCIL IN JUNE FOR CONSIDERATION – UNANIMOUSLY APPROVED**

Council Member Smiley requested that this item be placed on the agenda. He made a motion to have staff work with the Historic Preservation Commission (HPC) on a presentation to bring back to the City Council at a June meeting for consideration. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

City Manager’s Report

City Manager Wall stated that she did not have a report for the Council.

Comments from the Mayor and City Council

The City Council welcomed the Mayor back and expressed appreciation to Mayor Pro-Tem Glover for leading the Monday meeting.

Mayor Connelly expressed his appreciation to friends, colleagues, and the community for the outpouring of support to him and his family.

Recess

Council Member Smiley made a motion to recess the meeting to Monday, May 17, at 6:00 p.m. Council Member Daniels seconded the motion and it carried unanimously.

Reconvene

The City Council reconvened its meeting electronically using Zoom on Monday, May 17, at 6:00 p.m. Council Members present included Mayor P.J. Connelly, Mayor Pro-Tem Rose Glover, Council Member Monica Daniels, Council Member Will Bell, Council Member Rick Smiley,



Council Member William Litchfield, Jr. (entered meeting at 6:02 p.m.), and Council Member Brian Meyerhoeffer, Jr.

The State implemented rules of procedure for electronic meetings during declared States of Emergency. Public bodies are required to accept input on public hearing items up to 24 hours after public hearings are held. Those that were interested in submitting their comments to the City Council after public hearings held on Thursday, April 8, 2021, were instructed to email their comments to publicinput@greenvillenc.gov. The City Council did not receive any comments for any of the public hearings held at its April 8, 2021, meeting.

The City Council took the following action:

3.) ORDINANCE TO ANNEX THE CLYN W. BARBER AND EDNA P. BARBER PROPERTY INVOLVING 1.580 ACRES LOCATED ALONG THE SOUTHERN RIGHT-OF-WAY OF DICKINSON AVENUE EXTENSION AND 1,180 +/- FEET SOUTHWEST OF FROG LEVEL ROAD - *PUBLIC HEARING HELD ON MAY 13, 2021 AT 6:00 P.M.*; **UNANIMOUSLY APPROVED**

Council Member Meyerhoeffer made a motion to approve. Council Member Smiley seconded the motion and it carried unanimously.

4.) ORDINANCE REQUESTED COLLICE MOORE, JR. TO REZONE 1.4854 ACRES LOCATED AT THE NORTHWESTERN CORNER OF THE INTERSECTION OF DIAMOND DRIVE AND SAPPHIRE COURT FROM IU (UNOFFENSIVE INDUSTRY) TO CH (HEAVY COMMERCIAL) - *PUBLIC HEARING HELD ON MAY 13, 2021 AT 6:00 P.M.*; **UNANIMOUSLY APPROVED**

Council Member Smiley made a motion to approve. Mayor Pro-Tem Glover seconded the motion and it carried unanimously.

5.) ORDINANCE REQUESTED BY MQ CONSTRUCTION, LLC TO REZONE 2.385 ACRES LOCATED BETWEEN DICKINSON AVENUE AND SW GREENVILLE BOULEVARD AND 600 +/- FEET WEST OF WILLIAMS ROAD FROM RA20 (RESIDENTIAL-AGRICULTURAL) TO R6 (RESIDENTIAL [HIGH DENSITY MULTI-FAMILY]) - *PUBLIC HEARING HELD ON MAY 13, 2021 AT 6:00 P.M.*; **UNANIMOUSLY APPROVED**

Council Member Daniels made a motion to approve. Mayor Pro-Tem Glover seconded the motion and it carried unanimously.

6.) ORDINANCE REQUEST BY MICHAEL BIRCH, LONGLEAF LAW PARTNERS TO AMEND TITLE 9, CHAPTER 4, ARTICLE E, SECTION 9-4-86 (MM-1) DORMITORY DEVELOPMENT WITHIN THE CDF-UC DISTRICT OF THE CITY CODE BY DELETING



“9-4-86 (MM-1)(2) DORMITORY DEVELOPMENT WITHIN THE CDF-UC DISTRICT SHALL PROVIDE RETAIL SALES AND/OR OTHER NON-RESIDENTIAL USES WITH A MINIMUM FLOOR AREA OF 10,000 SQUARE FEET. FOR PURPOSES OF THIS REQUIREMENT, THE TERM FLOR AREA SHALL MEAN NON-STORAGE AREA WHICH IS USED AS RETAIL SALES, OR OTHER NON-RESIDENTIAL USES. WHERE ARCHITECTURAL LAYOUTS ARE NOT AVAILABLE FOR CONSIDERATION, THE FLOOR AREA WILL BE CALCULATED BY MULTIPLYING 80% TIMES THE GROSS AREA DESIGNATED AS NON-RESIDENTIAL USE UNTIL SUCH TIME ARCHITECTURAL LAYOUTS ARE AVAILABLE FOR CONSIDERATION OR OCCUPANCY HAS COMMENCED, WHICHEVER IS EARLIER.” - *PUBLIC HEARING HELD ON MAY 13, 2021 AT 6:00 P.M.*; **REQUEST WITHDRAWN BY THE APPLICANT**

City Attorney McGirt stated that staff had received a request from the applicant asking that the request be withdrawn. He advised the City Council to adopt a motion accepting the applicant’s withdrawal.

Council Member Smiley made a motion to accept the applicant’s withdrawal. Council Member Daniels seconded the motion and it carried unanimously.

7.) ORDINANCE TO DESIGNATE THE FLANAGAN-WAGNER HOUSE, LOCATED AT 903 EAST 5TH STREET AND FURTHER IDENTIFIED AS PITT COUNTY PARCEL NUMBER 14352, AS A LOCAL HISTORIC LANDMARK - *PUBLIC HEARING HELD ON MAY 13, 2021 AT 6:00 P.M.*; **UNANIMOUSLY APPROVED**

Council Member Daniels made a motion to approve. Mayor Pro-Tem Glover seconded the motion and it carried unanimously.

8.) PUBLIC HEARING FOR THE 2021-2022 ANNUAL ACTION PLAN FOR CDBG AND HOME FUNDS - *PUBLIC HEARING HELD ON MAY 13, 2021 AT 6:00 P.M.*; **UNANIMOUSLY APPROVED**

City Manager Wall stated that staff had received notice from Housing & Urban Development (HUD) that the FY 2021-22 allocation had been revised and the City will receive an additional \$14,846. She stated that those funds would be included in the action plan prior to being submitted to HUD, but does not trigger any additional public notice or hearing processes. She stated that the funds will be distributed among existing projects.

Council Member Daniels made a motion to approve. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

Adjournment



Mayor Pro-Tem Glover moved to adjourn the meeting. The motion was seconded by Council Member Smiley. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 6:10 p.m.

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk

PROPOSED MINUTES
CITY COUNCIL MEETING
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, MAY 24, 2021



A meeting of the Greenville City Council was held on Monday, May 24, 2021, electronically via Zoom, with Mayor P.J. Connelly presiding. Mayor Connelly called the meeting to order at 6:00 p.m. The invocation was led by Council Member Daniels and was followed by the Pledge of Allegiance.

Those Present:

Mayor P.J. Connelly, Mayor Pro-Tem Rose Glover, Council Member Monica Daniels, Council Member Will Bell, Council Member Rick Smiley, Council Member William Litchfield, Jr., and Council Member Brian Meyerhoeffer, Jr.

Those Absent:

None.

Also Present:

City Manager Ann E. Wall, City Attorney Emanuel McGirt, City Clerk Valerie Shiuwegar, Deputy Clerk Camillia Smith, Assistant City Manager Michael Cowin, Assistant City Manager Ken Graves

Approval of the Agenda

City Attorney McGirt requested that two items be added to the agenda:

- An item to consider the hire of a redistricting consultant,
- An item to add a closed session to discuss the acquisition of real property and the negotiation of a purchase price

Council Member Smiley made a motion to approve the agenda as revised. Council Member Daniels seconded the motion.

Council Member Bell requested that an item be added to discuss a return to in-person meetings and applicable policies.

Council Member Meyerhoeffer lost connectivity to the meeting at 6:04 p.m.

Council Member Smiley accepted Council Member Bell's friendly amendment to his original motion and moved that the agenda be approved as revised. Council Member Daniels seconded the amended motion and it carried unanimously by a vote of 5:0, with Mayor Pro-Tem Glover, Council Member Daniels, Council Member Bell, Council Member Smiley, and Council Member Litchfield voting in the affirmative.



Public Comment Period

Mayor Connelly opened the public comment period at 6:06 p.m., explaining the public comment procedures.

Council Member Meyerhoeffer rejoined the meeting at 6:07 p.m.

Denise McElwain

Ms. McElwain shared her experience trying to locate her lost dog and expressed concerns with animal control staff and the lack of effective methods to track animals that have been picked up in the area.

Mayor Connelly expressed his sympathy for Ms. McElwain's lost pet and suggested to the City Manager that a discussion be had about how the process is handled through APS and DOT to see if there are more effective ways to handle these types of matters.

City Manager Wall stated that staff can put the item on a future agenda and forward some information to the City Council on procedures within the city limits and work with existing partners in the community, including Pitt County Animal Control and the North Carolina Department of Transportation (NCDOT).

Mayor Connelly asked that staff first send out some information through Notes to Council to provide the Council with a better understanding of the process and partners involved.

There being no registered additional speakers and no public comment received in the public input inbox, Mayor Connelly closed the public comment period at 6:11 p.m.

Consent Agenda

City Manager Wall presented the following items to the City Council for approval:

1. Resolution granting electric easements for the use of Greenville Utilities Commission at Thomas Foreman Park – UNANIMOUSLY APPROVED
2. Request to purchase replacement vehicles and equipment for various City departments – UNANIMOUSLY APPROVED
3. Contract award to Farrior & Sons, Inc. for the construction of the Greenville Outdoor Aquatic Center at Thomas Foreman Park – UNANIMOUSLY APPROVED

New Business

- 4.) RESOLUTION APPROVING A LEASE AGREEMENT WITH BOYS & GIRLS CLUBS OF THE COASTAL PLAIN FOR A PORTION OF THE PROPERTY (INCLUDING SCHOOL



BUILDING AND OFFICE BUILDING) AT THE LUCILLE W. GORHAM INTERGENERATION CENTER – UNANIMOUSLY APPROVED

City Attorney McGirt presented the request to the City Council. Under the proposed agreement, the City would lease a portion of the Lucille W. Gorham Intergenerational Center on Ward Street in West Greenville to the Boys & Girls Club of the Coastal Plain to utilize as a Boys & Girls Club offering summer and afterschool programs. The term of the lease would be for five years with the option to renew for an additional five years. He stated that the Boys & Girls Club will have exclusive use of the playground and will be allocated ten parking spaces. He stated that the tenant will be authorized to enter license agreements with third parties to operate nonprofit or governmental services programs on the property.

Council Member Daniels asked when the programs would commence once the resolution is approved.

Ms. Kimberly Boyd, President of the Boys & Girls Club of the Eastern Plains, stated their intention to get the center ready as quickly as possible, starting no later than the beginning of the school year.

Mayor Pro-Tem Glover asked if the tenant would also have control of the community buildings adjacent to the Lucille W. Gorham Intergenerational Center. She stated the importance of providing the community with meeting spaces.

City Manager Wall stated that the City would retain the responsibility and control of the buildings that Mayor Pro-Tem Glover identified, the community annex, the chapel, and the building formerly known as the Little Willie Center. She stated that the Boys & Girls Club will lease the second floor of the office building and will work with the community to offer the space on the first floor.

Council Member Smiley made a motion to approve. Council Member Daniels seconded the motion and it carried unanimously.

5.) (ADDED) ITEM REGARDING A CONSULTANT FOR THE REDISTRICTING PROJECT – MOTION TO ACCEPT THE CITY ATTORNEY’S RECOMMENDATION TO HIRE THARRINGTON SMITH, UNANIMOUSLY APPROVED

City Attorney McGirt presented staff’s recommendation to engage a consultant for the City’s redistricting project. He noted the unique circumstances regarding this year’s election due to the delay in receiving Census data. He stated that there is currently a bill pending approval from State legislation that may allow cities to delay elections if the city determines that there may be population imbalances. He stated that staff had interviewed three consulting firms and recommends that the City Council hire law firm Tharrington Smith.



Council Member Smiley made a motion to accept the recommendation to engage Tharrington Smith. Council Member Meyerhoeffer seconded and the motion carried unanimously.

5.) (ADDED) DISCUSSION ON RETURNING TO IN-PERSON MEETINGS – DISCUSSION HAD

City Attorney McGirt stated that the City Council had adopted a resolution in August 2020 directing the City Council and all City public bodies to conduct remote meetings until further notice. He stated that the City Council has the ability to repeal the policy or make it effective at a later date.

Council Member Bell stated that he would like to give staff time to look at what a return to in-person meetings would entail and prepare for a potential return in August 2021.

City Manager Wall stated that a return in August would give staff enough time to make sure that all the protocols are in place for a return to in-person meetings.

Council Member Daniels asked about the possibility of blended meetings.

City Manager Wall stated that decision will be up to the City Council. She stated that staff will need to look into the logistics of having a mix of in-person and remote participation. She noted that if one member of the City Council participates remotely, it will trigger the State's remote meeting policy.

City Attorney McGirt advised that the remote meetings rules are only permissible under the Governor's State of Emergency.

Mayor Pro-Tem Glover asked for clarity on how that would impact the City's boards and commission.

City Manager Wall stated that if the City Council chooses to return to in-person meetings, then the City's boards and commissions would also return to in-person meetings, with the exception of a few identified boards which would be listed in the resolution.

City Attorney McGirt stated that a motion would not be necessary because staff has a sense of the direction that the City Council would like to go. He stated that a resolution reverting the City to in-person meetings would be brought back for consideration in June.

Mayor Connelly directed staff to send the City Council information on the possibility of hybrid meetings and bring back the item at the June 7, 2021, meeting.

City Manager's Report

City Manager Wall stated that she did not have a report for the Council.



Comments from the Mayor and City Council

The Mayor and City Council wished everyone a Happy Memorial Day and invited everyone to Community Arts Day in West Greenville on June 5th.

Closed Session

City Attorney McGirt requested that the City Council adopt a motion to enter into closed session pursuant to NC General State Statute 143-318.11 for the following reasons: 1. instruction to City staff on how to proceed in negotiating the purchase price and other material terms for the purchase of the following properties for the public purpose - a property owned by Rudolph and Angela Mevin, Jr., parcel #07607, 111 Green Briar Drive; a property owned by Clifton and Christie Edwards III, parcel #37409, 0 Cortland Road 2. Discussion of matters relating to the expansion of businesses or industries in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations.

Council Member Smiley made a motion to that effect. Council Member Bell seconded the motion and it was carried unanimously, bringing the City Council into a closed session at 6:43 p.m.

Council Member Smiley left the closed session at 7:15 p.m.

Council Member Daniels made a motion to exit the closed session. Mayor Pro-Tem Glover seconded the motion it carried unanimously by a vote of 5:0, with Mayor Pro-Tem Glover, Council Member Daniels, Council Member Bell, Council Member Litchfield, and Council Member Meyerhoeffer voting in the affirmative, taking the City Council into open session at 7:29 p.m.

Council Member Smiley rejoined the meeting at 7:30 p.m.

Adjournment

Council Member Meyerhoeffer moved to adjourn the meeting. The motion was seconded by Council Member Daniels. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 7:31 p.m.

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Amend the Policy on the Conditional Service, Sale, and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Department Parks and Facilities to Include Wildwood Park, and Amend the associated City Ordinance

Explanation: In March 2017, City Council amended Chapter 1 of Title 12 of the City Code relating to the consumption of alcoholic beverages in public spaces, adding Town Common as an approved venue for the conditional service, sale and consumption of certain alcoholic beverages. City staff are requesting the City Code be amended to include Wildwood Park under the current policy and procedures as Town Common.

Wildwood Park, located at 3450 Blue Heron Drive, is scheduled to open this fall and City staff are planning to activate the parks with various programs and special events. In anticipation of future events that may have community partners who desire to include alcohol as part of the offerings, staff have proposed adding Wildwood Park to the existing alcohol policy that covers the Town Common. The existing policy includes requirements such as permitting, training, insurance, various restrictions, and additional guidelines to ensure a safe environment. Adding Wildwood Park to the existing policy will help expand event opportunities and overall park use.

In addition to amending the policy, an amendment is required to the City ordinance which addresses at which properties owned, occupied, or controlled by the City that possession and consumption of malt beverages and unfortified wine is permitted. North Carolina General Statute 18B-300 authorizes City Council to regulate or prohibit the possession and consumption of malt beverages and unfortified wines on the public streets in the City and on property owned, occupied, or controlled by the City. The City's ordinance on this subject is Section 12-1-2 of the City Code.

The proposed ordinance amends Section 12-1-2 by providing that possession and consumption of malt beverages or unfortified wine is permitted at Wildwood Park in accordance with the provisions of the Policy and Procedures for the Conditional Service, Sale, and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities.

Fiscal Note: Minor costs could be incurred for developing related forms, but would be absorbed within the departmental budget.

Recommendation: Adopt the amended version of the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Department Parks and Facilities, and adopt the attached ordinance which amends the City Code provisions relating to the consumption of alcoholic beverages in public to allow consumption at Wildwood Park subject to conditions.

ATTACHMENTS

- 📎 **Ordinance Amending City Code Provisions Relating to Consumption of Alcoholic Beverages in Public.DOC**
- 📎 **1150646 - DRAFT--Town Common and Wildwood Park Alcohol Policy - 1 - COG.DOCX**

ORDINANCE NO. 21-____
ORDINANCE AMENDING CHAPTER 1 OF TITLE 12 OF THE CITY CODE
RELATING TO CONSUMPTION OF ALCOHOIC BEVERAGES IN PUBLIC

WHEREAS, North Carolina General Statute 18B-300 authorizes the City of Greenville to regulate or prohibit the consumption and possession of malt beverages and unfortified wine on the public streets and City owned property;

NOW, THEREFORE, the City Council of the City of Greenville, North Carolina, does hereby ordain:

Section 1. That Section 12-1-2 of the Code of Ordinances, City of Greenville, is hereby amended by rewriting subsection (C)(1) so that said subsection shall read as follows:

(C) Malt beverages and unfortified wine - exemptions.

- (1) Notwithstanding any other provision of this section, upon obtaining the alcoholic beverages permits as required by law, possession and consumption of malt beverages or unfortified wine shall be permitted at:
 - (a) A golf course owned, occupied or controlled by the city;
 - (b) A convention center owned, occupied or controlled by the city;
 - (c) The Walter L. Stasavich Science and Nature Center and River Park North in accordance with the provisions of the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities;
 - (d) The building owned by the city at the Perkins Complex in accordance with the provisions of the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities;
 - (e) The C.M. Eppes Recreation Center in accordance with the provisions of the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities;
 - (f) A building owned by the city and leased to a person for a period greater than two years, other than a building addressed in the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities, and with possession and consumption being in accordance with any applicable lease provisions;

- (g) The Town Common in accordance with the provisions of the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities; and
- (h) Wildwood Park in accordance with the provisions of the Policy and Procedures for the Conditional Service, Sale and Consumption of Alcoholic Beverages within Greenville Recreation and Parks Facilities; and
- (i) With the written approval of the City Manager and subject to any conditions identified by the City Manager in the written approval, other property owned, occupied or controlled by the city or public streets, alleys or parking lots which are temporarily closed to regular traffic for special events.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 4. This ordinance shall become effective upon its adoption.

This the 9th day of August, 2021.

P.J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk



Policy and Procedure for the Conditional Service, Sale, and Consumption of Alcoholic Beverages at Town Common and Wildwood Park

Section 1. Purpose. This Policy and Procedure governs the Conditional Service, Sale, Possession, and Consumption of Alcoholic Beverages at the Town Common and Wildwood Park.

Section 2. Definitions. The following words, terms, and phrases, when used in this Policy and Procedure, shall have the meanings ascribed to them in this section.

- A. ABC. North Carolina Alcoholic Beverage Control.
- B. Alcoholic Beverages. Malt beverages, unfortified wine, fortified wine, and spirituous liquor, as defined by Chapter 18B of the North Carolina General Statutes.
- C. Alcohol Zone. The designated and clearly delineated area within the Event Site, allowed by the City's lease and as authorized by the Commission by permit or otherwise by applicable North Carolina law, where the sale, service, possession, and/or consumption of alcoholic beverages must take place at all times during the Event.
- D. City. City of Greenville.
- E. Commission. North Carolina ABC Commission.
- F. Event. Event at Town Common or Wildwood Park which is conducted, sponsored, or sanctioned by the City and which may include the lawful sale, and/or service, possession, and consumption of alcoholic beverages.
- G. Event Site. A designated portion of Town Common or Wildwood Park planned for an Event which is specified and approved by the City.
- H. Lessee. A person who requests to lease an Event Site by and through the City's lease process as further defined in this Policy and Procedure. For each of the following corresponding types of alcoholic beverage, Lessee shall also mean the following:
 - 1) For Malt Beverages and/or Unfortified Wine:
 - a) The City.
 - b) A nonprofit organization as defined by Chapter 18B of the North Carolina General Statutes.
 - c) A political organization as defined by Chapter 18B of the North Carolina General Statutes.
 - d) Any other ABC permittee or person authorized to sell and/or serve, possess, and consume malt beverages and/or unfortified wine under North Carolina law.

2) For Fortified Wine and/or Spirituous Liquor.

a) A nonprofit organization as determined by Chapter 18B of the North Carolina General Statutes.

I. R&PD. City Recreation and Parks Department.

J. Person. An individual, firm, partnership, association, corporation, limited liability company, or other organization or group, or combination of individuals acting as a unit or as otherwise defined by Chapter 18B of the North Carolina General Statutes.

Section 3. City's Lease Process. The Lessee must obtain all required ABC permits issued by the Commission as required by law.

A. The Lessee must obtain written permission from the City to sell and/or serve, possess, and consume alcoholic beverages at the Event, by and through the execution of the City's lease, before a submission of the application for the ABC permit to the Commission. The City's lease must be submitted by the Lessee to the Commission with the ABC permit application.

B. Prior to holding the Event, the Lessee must provide to the City a copy of the ABC permit issued by the Commission.

C. The Lessee may only sell and/or serve alcoholic beverages pursuant to and in conformity with the issued ABC permit and the City's lease.

D. The Lessee must comply with all state and local laws including the provisions of Chapter 18B of the North Carolina General Statutes and the Administrative Rules adopted by the Commission as found in the North Carolina Administrative Code.

Section 4. Other Requirements for the Lessee and the Event.

A. The Lessee must be the Event sponsor that reserves and leases from the City the Event Site by way of the execution of an approved lease with the City.

B. By completion of the City's lease, the Lessee agrees to any and all restrictions, as included in the City's lease, including the use of the Event Site and the selling and/or serving, possessing, and consuming of alcoholic beverages at the Event.

C. In addition to the terms of the City's lease and the restrictions as established by applicable law, the following restrictions apply to the selling and/or serving of alcoholic beverages at the Event:

1) The Lessee may only serve and/or sell alcoholic beverages to individuals 21 years old and older who are attending the Event.

- 2) The sale, service, possession, and/or consumption of alcoholic beverages must take place only within the Alcohol Zone. The Alcohol Zone shall be developed to the City's specifications and established in cooperation with City staff, as determined by the nature of the Event. The Alcohol Zone shall be defined and delineated in the City's lease. The Lessee shall be responsible for all costs associated with establishing and delineating the Alcohol Zone. All portions of Town Common or Wildwood Park outside the Alcohol Zone shall be free of all alcoholic beverages.
- D. Training on how to provide safe and responsible service of alcoholic beverages is required to be shown to the satisfaction of the City by the Lessee prior to the Event. Training shall include, but shall not be limited to, completion of a responsible alcoholic beverage sales program such as:
- 1) Responsible Alcohol Seller Program (R.A.S.P.) conducted by the Commission.
 - 2) Responsible Alcohol Sale Education (R.A.S.E.) conducted by the Pitt County ABC Law Enforcement Division.
- E. All sales and/or service of alcoholic beverages shall conclude by 10:00 p.m. All possession and consumption of alcoholic beverages shall conclude at 10:30 p.m.
- F. At least two (2) special duty City police officers are required to be present at the Alcohol Zone for the duration of the sale, service, possession, and consumption period. Depending upon the size of the Alcohol Zone, additional City police officers may be required to be present, as determined by the City in its sole discretion. The Lessee shall be responsible for all expenses for the special duty City police officers assigned for the Event. There will be a minimum charge to the Lessee of four (4) hours for each special duty City police officer assigned to the Event.
- G. The Lessee and/or a representative of the Lessee, as designated per the City's lease, must be present at the Alcohol Zone for the duration of the sales, service, possession, and/or consumption period.
- H. The Lessee must provide to the City proof of required insurance as follows:
- 1) Proof of insurance must be provided to the City no later than 14 days prior to the Event, or the Lessee will be subject to a late fee as established in the City's current Manual of Fees.
 - 2) The Event WILL be cancelled if proof of required insurance coverage is not received by the City at least seven (7) days prior to the Event.
 - 3) The insurance policy provided by the Lessee to the City must specifically acknowledge that the Event includes alcoholic beverage sales and/or service, possession, and consumption.

- 4) The insurance coverage must include public liability and property damage at amounts acceptable to the City and name the City of Greenville as an additional insured on all coverage.
 - 5) The insurance coverage must also include liquor liability insurance for any request to lease any portion of Town Common or Wildwood Park that would include the sale and/or service of spirituous liquor and/or fortified wine.
 - 6) Additional liability insurance may be required by the City with the City identified as additional insureds. Determination will be made for this requirement prior to approval of the lease agreement by the City and prior to issuance of the corresponding ABC permit(s). This requirement is at the discretion of the City Manager, or designee, based on the nature, character, time, size, history, and location of the event.
- I. A standard waiver of liability and/or hold harmless agreement shall be executed by the Lessee releasing the City of any liability associated with the sale, service, possession and/or consumption of alcoholic beverages on Town Common or Wildwood Park.
 - J. No glass containers or coolers are permitted.
 - K. Brown-bagging is not permitted.
 - L. The Lessee must ensure that participants and attendees at the Event do not bring any alcoholic beverages into the Event Site or the Alcohol Zone.
 - M. In order to maintain safety, the R&PD and/or the City Police Department reserve(s) the right to request patrons, guests, or attendees that are perceived to be intoxicated and/or disorderly to leave the Event Site. The Lessee shall be responsible for providing designated drivers or other means of transportation to those patrons, guests, or attendees who are intoxicated.
 - N. Failure to comply with any or all of the restrictions as identified in this Policy and Procedure may result in the following:
 - 1) Denial by the City of current and/or future lease requests by the Lessee/requesting party for the use of an Event Site.
 - 2) Cancellation or termination of the City's lease or closure of the Event.

Please also note: The provisions of Section 4. (above) apply to any person who is not required to obtain an ABC Commission Permit to serve without charge unfortified wine and/or malt beverages as otherwise authorized under North Carolina law.



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Resolution authorizing a lease agreement with Vietnam Veterans of America, George F. Semick Chapter #272, for the property and improvements known as the Old Police Hut located at 2805 East Second Street, being a portion of Tax Parcel #28980

Explanation: Vietnam Veterans of America, George F. Semick Chapter #272, has been leasing the Old Police Hut at 2805 East Second Street since 1991. The Chapter uses the building for its meetings and activities and also allows other groups to use it for meetings and functions. The annual lease payment is \$1, but the Chapter is responsible for all repairs, maintenance, and utilities expenses.

The previous lease was for an initial five-year term of April 1, 2010 through March 31, 2015, and the option was exercised to extend the lease for an additional five-year period through March 31, 2020. That lease has expired, and the Chapter wishes to enter into a new lease to allow for continued use of the property. The attached letter from the Chapter requests that the lease be extended.





The proposed lease is for a five-year period under basically the same terms as the previous lease with an option for the chapter to continue the lease for another five (5) years. This has been considered a good use of the building, which provides a site for community meetings and functions. The required notice of the intent to authorize the lease has been published. A copy of the lease is attached.

The attached resolution approves the lease agreement with the Vietnam Veterans of America, George F. Semick Chapter #272, for the property currently known as the Old Police Hut located at 2805 East Second Street for a term of five (5) years commencing on August 9, 2021, and terminating on August 8, 2026, with an option for an additional five (5) years, for the annual rental sum of one dollar (\$1) and does further authorize the City Manager to execute said lease agreement.

Fiscal Note: \$1 to be received as an annual lease payment.

Recommendation: Approval of the resolution authorizing the lease agreement with the Vietnam Veterans of America, George F. Semick Chapter #272, and authorizing the City Manager to execute the lease agreement

ATTACHMENTS

-  [Request from VVA to Extend Lease.pdf](#)
-  [Resolution Approving Lease with VVA.pdf](#)
-  [Lease with VVA Chapter 272.pdf](#)
-  [VVA Lease Attachment A.pdf](#)

June 24, 2021

Office of the City Manager
Greenville, North Carolina


To Whom It May Concern:

The Vietnam Veterans of America, Chapter 272 would like to request an extension of our lease on the building located at 2805 Cemetery Road in Greenville. We wish to continue using the facility to provide services and support for our chapter members and the community.

Thank you for your time and consideration in this matter.

Sincerely,


Donald Simmons
President


Paul Smith
Vice President

RESOLUTION ___-21
RESOLUTION APPROVING A LEASE AGREEMENT WITH
VIETNAM VETERANS OF AMERICA, GEORGE F. SEMICK CHAPTER #272

WHEREAS, North Carolina General Statute 160A-272 authorizes the City Council of the City of Greenville to approve a lease of property for a term of ten (10) years or less for any property owned by the City for such terms and upon such conditions as City Council may determine; and

WHEREAS, City Council does hereby determine that the property herein described will not be needed by the City for the term of the lease; and

WHEREAS, the required notice has been published and the City Council is convened in a regular meeting;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the Lease Agreement with the Vietnam Veterans of America, George F. Semick Chapter #272, for the property known as the Old Police Hut located at 2805 East Second Street, being a portion of Tax Parcel #28980, for a term of five (5) years commencing on August 9, 2021, and terminating on August 8, 2026, with an option for an additional five (5) years for the annual rental sum of one dollar (\$1.00).

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the City Manager is hereby authorized to execute said Lease Agreement, and the City Manager is authorized to negotiate any additional terms necessary for the lease that are in the best interest of the City not inconsistent with the terms herein.

This the 9th day of August, 2021.

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

#1141759

**NORTH CAROLINA
COUNTY OF PITT**

**LEASE
AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this the 9th day of August, 2021, by and between the City of Greenville, a North Carolina municipal corporation, Party of the First Part and hereinafter referred to as LESSOR, and Vietnam Veterans of America, George F. Semick Chapter #272, Party of the Second Part and hereinafter referred to as LESSEE;

Subject to the terms and conditions of this Lease Agreement, LESSOR does hereby let and lease unto the LESSEE, and LESSEE does hereby lease from the LESSOR, the following described premises located in Greenville, North Carolina:

The property and improvements known as the Old Police Hut located at 2805 East Second Street, Greenville, North Carolina, being a portion of Tax Parcel #28980, as shown on Attachment A.

The terms and conditions of this Lease Agreement are as follows:

1. Term.

The term of this Lease Agreement is for five (5) years, commencing on the 9th day of August, 2021, and expiring on the 8th day of August, 2026. Provided that all conditions of this Lease Agreement have been properly complied with by the LESSEE, the LESSEE may at its option extend the term of this Lease Agreement for an additional term of five (5) years by giving to the LESSOR written notice of its intention so to do not later than the 1st day of June, 2026, and in the event of such extension, all of the terms and conditions of this Lease Agreement shall continue in full force and effect.

2. Rent.

The annual rent shall be ONE DOLLAR, and shall be paid by the first day of August of each year. Rent payments shall be delivered to the City Manager of the City of Greenville, P.O. Box 7207, Greenville, NC 27835.

3. Use of Leased Premises.

During the term of this Lease Agreement, LESSEE shall use the leased premises for meetings and sponsored functions of the LESSEE and for other meetings and functions specifically approved by the LESSEE. LESSEE shall make no other use of the leased premises without the prior written consent of the LESSOR.

4. Additional Limits and Conditions.

In addition to the restrictions on the use of the leased premises set forth in paragraph 3, the LESSEE agrees to the following limits and conditions governing the use of the leased premises:

- a. The possession of and use of alcoholic beverages is prohibited on the leased premises, except for scheduled social functions of the LESSEE held exclusively for the members and guests of the LESSEE.
- b. All use of the leased premises must cease by 9:00 PM, except for scheduled social functions of the LESSEE held exclusively for members and guests of the LESSEE and scheduled meetings of the LESSEE held exclusively for members and guests of the LESSEE.
- c. There shall be no music or sound at the leased premises which violates the provisions of the Noise Control Ordinance contained in Chapter 5 of Title 12 of the Greenville City Code.
- d. Persons not participating in scheduled meetings or functions or activities at the leased premises will not be allowed to loiter on the premises and will be considered as trespassers.

5. Trespass Agreement.

LESSEE shall complete and file with the Greenville Police Department a Trespass Agreement which authorizes Greenville Police Department officers to remove and/or arrest trespassers upon the leased premises. LESSEE shall ensure that the Trespass Agreement is kept current and effective during the term of this Lease Agreement.

6. Use by Other Community Groups.

LESSEE shall make the leased premises available to other community groups for their use. This responsibility shall include, but not be limited to, advertising the availability of the leased premises for other community groups and making all other arrangements necessary to make the leased premises freely available for community activities and other community groups.

7. Activities Report.

Within thirty (30) days of a request by the LESSOR, the LESSEE shall provide a written report to the LESSOR on the meetings, functions, and activities occurring on the leased premises during the term of this Lease Agreement.

8. Signage.

No signs shall be erected on the leased premises without the prior written approval of the LESSOR. Notwithstanding the foregoing, it is understood and agreed that LESSEE shall be permitted to install a sign, subject to the approval of the LESSOR, to identify the building as being occupied by the LESSEE.

9. Acceptance of Leased Premises.

The LESSEE agrees to accept the leased premises in its present physical condition.

10. Repairs and Maintenance.

The LESSEE shall, at its expense, be responsible for all maintenance and repairs, both major and minor, of the leased premises. The responsibility of the LESSEE includes, but is not limited to, the following maintenance of the leased premises:

(a) Routine, periodic maintenance for heating and air conditioning systems including, but not limited to, the replacement of filter pads.

(b) Maintenance of lawns.

(c) Fire extinguisher servicing, pest control, and outside trash disposal.

The LESSEE shall, at its expense, be responsible for the maintenance and repairs to the leased premises so that the leased premises are kept in a habitable and usable condition. The LESSEE shall, at its sole expense, keep the leased premises, in good condition, reasonable wear and tear excepted. The LESSEE shall give the LESSOR notice of any repairs made.

The LESSEE shall, at its expense, be responsible for keeping the leased premises in a good, clean, neat, attractive, pleasant and sanitary condition at all times. The LESSEE shall be responsible for providing and paying for all charges for housekeeping, cleaning, and janitorial services at the leased premises.

11. Annual Inspection:

During the term of this Lease Agreement, the LESSEE and LESSOR shall make an annual inspection of the leased premises to determine the state of maintenance and repair and to discuss any mutual concerns regarding the upkeep and maintenance of the leased premises. The Chief Building Inspector, the Building and Grounds Superintendent of the Public Works Department, and Risk Manager or their designees shall represent the LESSOR in the annual inspection. The President of the LESSEE or his designee shall represent the LESSEE in the annual inspection. Other employees of the LESSOR or members of the LESSEE may participate in the inspection.

12. Alterations and Improvements.

No alterations, additions, improvements, or renovations shall be made to the leased premises without the prior written consent of the LESSOR.

13. Utilities.

The LESSEE shall be responsible for providing and paying for all charges for electricity, lighting, heating, water, air conditioning, and sewer used by LESSEE in connection with the occupancy of the leased premises. The LESSEE shall be responsible, at its expense, for the telephone charges, network connection charges, and all charges for utilities used by LESSEE in connection with the occupancy of the leased premises.

14. Taxes and Assessments.

LESSEE shall pay any taxes or assessments imposed on the leased premises during the term of this LEASE. In addition, LESSEE shall be responsible for any taxes imposed on the property of LESSEE used on the leased premises.

15. Insurance.

The LESSEE will at all times during the term of this Lease Agreement, at its expense, insure and keep in effect insurance on the leased premises against claims for personal injury or property damage under a policy of general liability insurance with a combined single limit of not less than \$1,000,000 with the LESSOR named as an additional named insured, written by an insurance company or companies authorized to do business in the State of North Carolina. The LESSEE shall provide the LESSOR with a certificate of insurance evidencing said coverage.

16. Damage or Destruction by Fire or Other Casualty.

In the event that the building located on the leased premises is destroyed by fire or other casualty or act of God, then this Lease Agreement shall terminate as of the time of such destruction without action on the part of either the LESSOR or the LESSEE. In the event that the building located on the leased premises is so damaged by fire, other casualty, or act of God that more than fifty percent (50%) of the floor space of the building cannot reasonably be used by LESSEE in the conduct of its activities, or the building is so damaged by fire or other casualty or act of God that it cannot, in the LESSOR's opinion, be economically repaired, then either party shall have the option to terminate this Lease Agreement by the provision of written notice to the other party.

17. Assignment and Subletting.

LESSEE may not assign or transfer this Lease Agreement or sublet the leased premises or any part of the leased premises without the prior written consent of the LESSOR.

18. Indemnity.

The LESSEE agrees to indemnify and save harmless the LESSOR and its officers and employees from and against any and all claims and demands whether from injury to person, loss of life, or damage to property, associated with the programs, functions, and activities conducted or approved by the LESSEE on or within the demised premises.

19. Surrender on Termination.

Upon the termination of this Lease Agreement for any reason, the LESSEE shall yield and deliver peaceably to the LESSOR possession of the leased premises and any alterations, additions, and improvements made by LESSEE thereto, promptly and in good condition, order, and repair, except for reasonable wear and tear and acts of God.

20. Default.

If LESSEE shall neglect to pay any annual installment of rent when due, or shall neglect to do and perform any other matter agreed to be done, and shall remain in default for a period of thirty (30) days after receiving written notice from LESSOR calling attention to the non-payment or default, LESSOR may declare this Lease Agreement terminated and take possession of the leased premises without prejudice to any other legal remedy it may have on account of such default. If LESSOR neglects to do or perform any matter agreed to be done in this Lease Agreement and shall remain in default for a period of thirty (30) days after written notice from the LESSEE calling attention to such default, the LESSEE may declare this Lease Agreement terminated without prejudice to any other legal remedy it may have on account of such default.

21. Liens.

The LESSEE agrees that it will not permit the claim of any contractor, sub-contractor, mechanic, laborer or materialmen to become and remain a lien on the leased premises or upon the right, title or interest of the LESSEE created by this Lease Agreement after the indebtedness secured by such lien shall become due unless the same is in the process of actually being contested in good faith on the part of the LESSEE and in any event the LESSEE will protect, indemnify and save harmless the LESSOR from and in respect of any and all such claims.

22. Access.

LESSEE will be able to secure and restrict access to the leased premises when not in use for its activities. Notwithstanding the foregoing, LESSOR and LESSOR's officers and employees shall have full access to enter the leased premises anytime to examine the condition thereof or make repairs, additions or alterations as may be necessary for the safety, preservation or improvement of the property which the LESSOR, in its sole discretion, determines to make or for any other purpose which the LESSOR deems appropriate as it relates to the physical facility and equipment.

23. Quiet Enjoyment.

LESSOR agrees that LESSEE, upon payment of rent and performing the agreements in this Lease Agreement may peacefully and quietly have, hold and enjoy the said leased premises in accordance with all the terms of this Lease Agreement.

24. Notices.

Any notice provided for herein shall be deemed to have been served sufficiently when presented personally or sent by first class mail addressed as follows:

If to LESSOR:
City Manager
City of Greenville
P.O. Box 7207
Greenville, NC 27835

If to LESSEE:
President
Vietnam Veterans of America,
George F. Semick Chapter #272
P.O. Box 171
Greenville, NC 27835

Addresses for the purpose of this section can be changed by written notice to the other party by certified mail with returned receipt requested.

25. Legal and Regulatory Duties.

The LESSEE shall observe all applicable local, state, and federal laws and regulations as they pertain to LESSEE's use and occupation of the leased premises. LESSEE shall indemnify and hold harmless the LESSOR from and against any liability arising from such laws or regulations caused by LESSEE's use or occupation of the leased premises.

26. Amendment.

This Lease Agreement shall not be altered, amended or modified except by an agreement in writing executed by the duly authorized officials of the LESSOR and LESSEE.

27. Entire Agreement.

This Lease Agreement is the only agreement between the parties hereto with respect to the subject matter hereof and contains all of the terms agreed upon, and there are no other agreements, oral or written, between the parties hereto with respect to the subject matter thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed in duplicate originals as of the day and year first above written.

CITY OF GREENVILLE

VIETNAM VETERANS OF AMERICA,
GEORGE F. SEMICK CHAPTER #272

BY: _____
Ann E. Wall, City Manager

BY: _____
Donald Simmons, President

**NORTH CAROLINA
PITT COUNTY**

I, _____, Notary Public in and for the aforesaid County and State, do hereby certify that Ann E. Wall, City Manager for the City of Greenville, personally appeared before me on this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the ____ day of _____, 2021.

Notary Public

My Commission Expires: _____

**NORTH CAROLINA
PITT COUNTY**

I, _____, Notary Public in and for the aforesaid County and State, do hereby certify that Donald Simmons, President of Vietnam Veterans of America, George F. Semick Chapter #272, personally appeared before me on this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the ____ day of _____, 2021.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

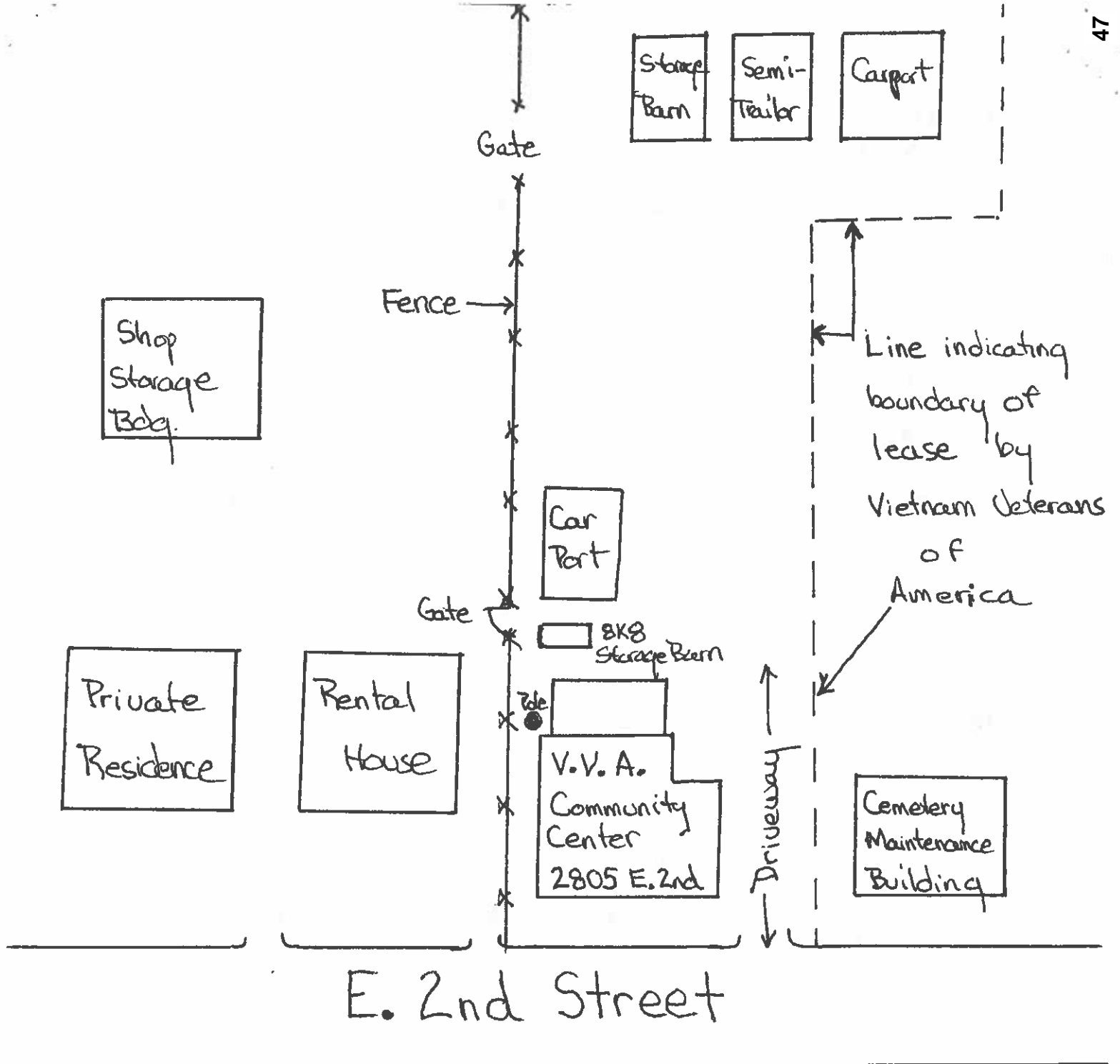
PRE-AUDIT CERTIFICATION:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

BY: _____
Byron Hayes, Director of Financial Services

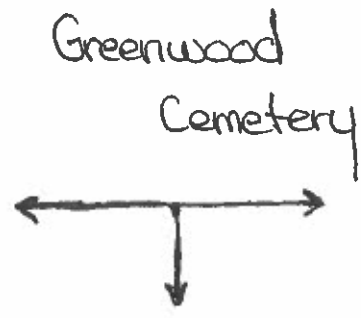
Account Number _____

Project Code (if applicable) _____



Not to Scale

Attachment "A"



Greenwood Cemetery



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Encroachment Agreement with Greenville Ventures NC, LLC at 120 East Fourth Street

Explanation: The City has received a request from Greenville Ventures NC, LLC to encroach within the City owned alley located at 120 East Fourth Street for uses associated with the operation of the forthcoming Evans Street hotel. The encroachment includes the installation of an underground grease trap, an elevated canopy over and upon the pedestrian access way located on the southern and western sides of the Fourth Street parking garage, and the installation of a generator on the eastern side of the alley.

Attached for City Council's consideration is the Encroachment Agreement setting out the terms by which Greenville Ventures, LLC, may encroach upon City property.

Staff takes no exception to this request.

Fiscal Note: No fiscal impact is anticipated with this action.

Recommendation: City Council approve the encroachment agreement permitting Greenville Ventures NC, LLC, to encroach within the City owned alley located at 120 East Fourth Street for uses associated with the operation of the forthcoming Evans Street hotel.

ATTACHMENTS

 [Combined ENC Hotel.pdf](#)

-----[SPACE ABOVE THIS LINE IS RESERVED FOR RECORDATION DATA]-----

STATE OF NORTH CAROLINA
COUNTY OF PITT

Prepared by: City of Greenville
Mail to: City of Greenville PWD
PO Box 7207
Greenville, NC 27835

Encroachment Agreement
120 E. Fourth Street
Parcel number 15715

THIS AGREEMENT made and entered into this the _____ day of August, 2021, by and between the **CITY OF GREENVILLE**, a municipal corporation created under the laws of the State of North Carolina, P.O. Box 7207, Greenville, NC 27835, party of the first Part and hereinafter sometimes referred to as the **CITY**, and **GREENVILLE VENTURES, LLC**, a limited liability company created under the laws of the State of Florida and authorized to do business in the State of North Carolina, with registered mailing address, 648 Northeast Third Avenue, Fort Lauderdale, Florida, 33304, the party of the second party and hereinafter sometimes referred to as the **OWNER**;

W I T N E S S E T H

THAT WHEREAS, the CITY is the owner of real property acquired by Deed recorded in Book T-43, Page 473, being a parking deck located at 120 E. Fourth Street, and having Pitt County Parcel Number 15715.

WHEREAS, the OWNER intends to develop a hotel at 423 Evans Street, and in association with said development, desires to encroach upon the property of the City of Greenville to install a generator, grease trap, and canopy, over and upon the pedestrian access way located on the southern and western sides of the parking deck as shown on Attachment "A";

WHEREAS, it is to the material advantage of the OWNER to effect this encroachment, and the CITY, in the exercise of authority conferred upon it by statute, is willing to permit the encroachments within the easement areas as shown on attachment "A", subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the execution of this Agreement by the CITY, the benefits flowing to the OWNER, and the covenants and agreements herein contained with respect to the obligations of the OWNER hereunder, the CITY does hereby give and grant unto the OWNER, the right and privilege to make the encroachments, within the easement areas as shown on attachment "A", subject to the conditions contained in this Agreement.

TO HAVE AND TO HOLD said encroachment rights under this Agreement unto the OWNER, provided, however, the OWNER performs and abides by the covenants and agreements herein contained.

The covenants and agreements to be performed by the OWNER as a part of the consideration for this encroachment agreement are as follows:

1. All costs of construction and maintenance of the encroaching structures will be at the sole cost and expense of the OWNER.

2. All damages to CITY property and pedestrian access ways, or to facilities maintained by Greenville Utilities Commission or other public utilities as a result of the construction or maintenance of the encroaching structures, shall be borne by the OWNER, including but not limited to the following:

- a. Restoring the pedestrian access ways to good, passable condition for use by the public.
- b. Repairing any damage to the existing curbing or sidewalks.
- c. Repairing any damage to facilities maintained by the CITY, Greenville Utilities Commission or other public utilities.

3. Any damage to the OWNER's encroaching structures caused by the CITY or Greenville Utilities Commission use of its property for construction or maintenance work in the ordinary course of its business, shall be borne by the OWNER.

4. The OWNER shall provide to the CITY a structural engineer design analysis of the proposed canopy attachment method to any CITY structure for approval.

5. The OWNER shall install and maintain the encroaching structures in such safe and proper condition that it will not obstruct or interfere with the proper maintenance of the pedestrian access ways or facilities maintained by the CITY or Greenville Utilities Commission and if at any time in the future the CITY or Greenville Utilities Commission shall require the removal of or changes in the location of the encroaching structures, the OWNER shall promptly remove or alter the location of the encroaching structures in order to conform to such requirements without cost to the CITY.

6. The OWNER hereby agrees to indemnify and save the CITY and its officers and employees harmless from all damages and claims for damage that may arise by reason of the installation and maintenance of the encroaching structure.

7. The OWNER agrees to exercise every reasonable precaution during construction and maintenance of the encroaching structures to prevent damage to the pedestrian access ways, City facilities, or facilities maintained by Greenville Utilities Commission or other public utilities.

8. The OWNER shall comply with all applicable rules, regulations, and ordinances of the CITY as well as those of state and federal regulatory agencies. Whenever any installation or maintenance operation by the OWNER or its contractors disturbs the ground surface, the OWNER agrees to return the area as nearly as possible to its condition prior to disturbance.

9. The OWNER agrees to assume the actual cost of any inspection of the OWNER's work considered to be necessary by the CITY.

10. In the event of noncompliance by the OWNER with any of the covenants and agreements herein contained, the CITY reserves the right to stop all works by the OWNER until the OWNER complies, or to cause the removal of the encroaching structure from its right of way or from City property without cost to the CITY.

11. Notwithstanding any other provision of this Agreement, the CITY may terminate the right, privilege, and easement granted herein by the provision of at least thirty-day (30) written notice to the OWNER.

IT IS UNDERSTOOD AND AGREED that this Agreement shall become null and void if actual installation of the encroaching structures is not complete within two (2) years from the date of the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate originals as of the day and year first above written.

GREENVILLE VENTURES, LLC

By: _____ (SEAL)
John Sandlin, Managing Member

CITY OF GREENVILLE

By: _____
P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

RECOMMENDED:

Kevin Mulligan, P.E., Director of Public Works

State of North Carolina

County of Pitt

I, _____, Notary Public of Pitt County, North Carolina, do hereby certify that Valerie Shiuwegar, personally appeared before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipal corporation, and that by authority duly given and as the act of the City of Greenville through and by the City Council, its governing body, the foregoing instrument was signed in its name by P.J. Connelly, Mayor, sealed with its corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of August, 2021.

_____, Notary Public
(Print or Type Name of Notary Here)

My Commission Expires: _____

State of _____

County of _____

I, _____ a notary public in and for the aforesaid county and state, certify that John Sandlin, personally appeared before me this day, and stated he is a managing member of Greenville Ventures, LLC, a limited liability company created under the laws of the State of Florida and authorized to do business in the State of North Carolina, that the foregoing agreement with the City of Greenville carries on in the usual way the company's business, and acknowledged the due execution of the foregoing agreement on behalf of the company.

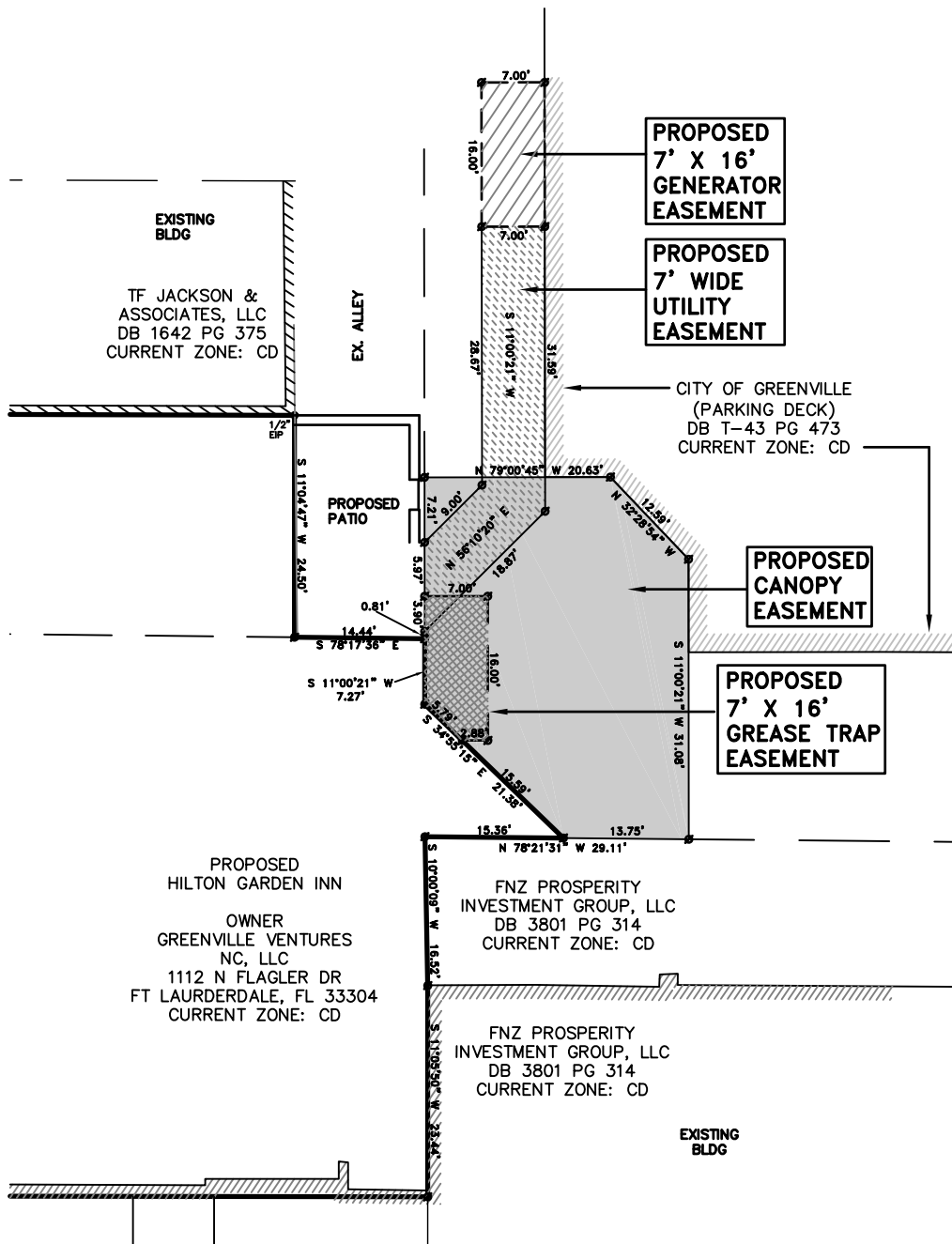
WITNESS my hand and Notarial Seal, this the _____ day of _____, 2021.

_____, Notary Public
(Print or Type Name of Notary Here)

My Commission Expires: _____



ATTACHMENT "A"



Herring-Sutton & Associates, P.A.
 ENGINEERS - SURVEYORS - PLANNERS / FIRM LICENSE #C-2310
 2201 NASH ST NW WILSON, N.C. 27896 TEL. (252)291-8887

ENCROACHMENT EXHIBIT
 HILTON GARDEN INN
 GREENVILLE, NC



City of Greenville,
North Carolina

Meeting Date: 08/09/2021

-
- Title of Item:** Encroachment Agreement with William Lester Johnson, Jr., and Knotty Props, LLC, as Tenants in Common at 501 Evans Street
- Explanation:** For City Council's consideration is the Right-of-Way Encroachment Agreement setting out the terms by which William Lester Johnson, Jr., and Knotty Props, LLC may encroach upon the street right-of-ways of E. Fifth Street and Evans Street to construct a canopy.
- Fiscal Note:** No fiscal impact is anticipated with this action.
- Recommendation:** City Council approve the right-of-way encroachment agreement permitting William Lester Johnson, Jr., and Knotty Props, LLC, to encroach over and upon the public street right-of-ways of E. Fifth Street and Evans Street, 501 Evans Street, to construct a canopy.
-

ATTACHMENTS

 [Encroachment Agreement - _501_Evans_St.pdf](#)

-----[SPACE ABOVE THIS LINE IS RESERVED FOR RECORDATION DATA]-----

STATE OF NORTH CAROLINA
COUNTY OF PITT

Prepared by: City of Greenville
Mail to: City of Greenville PWD
PO Box 7207
Greenville, NC 27835

Right of Way Encroachment Agreement
501 Evans Street, Canopy

THIS AGREEMENT made and entered into this the ____ day of August, 2021, by and between the **CITY OF GREENVILLE**, a municipal corporation created under the laws of the State of North Carolina, P.O. Box 7207, Greenville, NC 27835, party of the first Part and hereinafter sometimes referred to as the **CITY**, and **WILLIAM LESTER JOHNSON, JR.**, unmarried, as Tenant in Common with 57.78% undivided interest and **KNOTTY PROPS, LLC**, a limited liability corporation created under the laws of the State of North Carolina, 1116 Queensferry Road, Cary, NC 27511, as Tenant in Common with 42.22% undivided interest, together being the parties of the second party and hereinafter sometimes referred to as the **OWNER**;

W I T N E S S E T H

THAT WHEREAS, the OWNER desires to encroach upon the public right of way of the public street designated as E. Fifth Street and Evans Street to install a canopy over and above the sidewalk at 501 Evans Street as shown on Attachment "A";

WHEREAS, it is to the material advantage of the OWNER to effect this encroachment, and the CITY, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right of way as indicated on attachment "A", subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the execution of this Agreement by the CITY, the benefits flowing to the OWNER, and the covenants and agreements herein contained with respect to the obligations of the OWNER hereunder, the CITY does hereby give and grant unto the OWNER, the right and privilege to make the encroachment, as shown on attachment "A", subject to the conditions contained in this Agreement.

TO HAVE AND TO HOLD said encroachment rights under this Agreement unto the OWNER, provided, however, the OWNER performs and abides by the covenants and agreements herein contained.

The covenants and agreements to be performed by the OWNER as a part of the consideration for this encroachment agreement are as follows:

1. All costs of construction and maintenance of the encroaching structure will be at the sole cost and expense of the OWNER.
2. All damages to the right of ways, including the traveled portion of the street located thereon, or to facilities maintained by Greenville Utilities Commission as a result of the construction or maintenance of the encroaching structure, shall be borne by the OWNER, including but not limited to the following:
 - a. Restoring the traveled portion of the street to good, passable condition for use by the public.
 - b. Repairing any damage to the existing curbing or sidewalks.
 - c. Repairing any damage to facilities maintained by Greenville Utilities Commission
3. Any damage to the OWNER's encroaching structure caused by the CITY's or Greenville Utilities Commission use of its right of ways for construction or maintenance work in the ordinary course of its business, shall be borne by the OWNER.
4. The OWNER shall maintain the encroaching structure so that it does not interfere with the utilization of the right of way by the CITY or utilization by the Greenville Utilities Commission of the right of way or facilities maintained by Greenville Utilities Commission.
5. The OWNER shall install and maintain the encroaching structure in such safe and proper condition that it will not obstruct or interfere with the proper maintenance of the right of way, or facilities maintained by Greenville Utilities Commission and if at any time in the future the CITY shall require the removal of or changes in the location of the encroaching structure, the OWNER shall promptly remove or alter the location of the encroaching structure in order to conform to such requirements without cost to the CITY.
6. The OWNER hereby agrees to indemnify and save the CITY and its officers and employees harmless from all damages and claims for damage that may arise by reason of the installation and maintenance of the encroaching structure.
7. The OWNER agrees to exercise every reasonable precaution during construction and maintenance of the encroaching structures to prevent damage to the right of way or facilities maintained by Greenville Utilities Commission. The OWNER shall comply with all applicable rules, regulations, and ordinances of the CITY as well as those of state and federal regulatory agencies. Whenever any installation or maintenance operation by the OWNER or its contractors disturbs the ground surface, the OWNER agrees to return the area as nearly as possible to its condition prior to disturbance.
8. The OWNER agrees to assume the actual cost of any inspection of the OWNER's work considered to be necessary by the CITY.
9. In the event of noncompliance by the OWNER with any of the covenants and agreements herein contained, the CITY reserves the right to stop all works by the OWNER until the OWNER complies, or to cause the removal of the encroaching structure from its right of way or from City property without cost to the CITY.

10. Notwithstanding any other provision of this Agreement, the CITY may terminate the right, privilege, and easement granted herein by the provision of at least thirty-day (30) written notice to the OWNER.

IT IS UNDERSTOOD AND AGREED that this Agreement shall become null and void if actual installation of the encroaching structure is not complete within one (1) year from the date of the execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate originals as of the day and year first above written.

WILLIAM LESTER JOHNSON, JR.

By: _____ (Seal)
William Lester Johnson, Jr.

KNOTTY PROPS, LLC

By: _____ (Seal)
Christopher C. Knott, Managing Member

CITY OF GREENVILLE

By: _____
P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

RECOMMENDED:

Lisa Kirby, P.E., Director of Engineering

State of North Carolina

County of Pitt

I, _____, Notary Public of Pitt County, North Carolina, do hereby certify that Valerie Shiuwegar, personally appeared before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipal corporation, and that by authority duly given and as the act of the City of Greenville through and by the City Council, its governing body, the foregoing instrument was signed in its name by P.J. Connelly, Mayor, sealed with its corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of August, 2021.

_____, Notary Public
(Print or Type Name of Notary Here)

My Commission Expires: _____

State of North Carolina

County of _____

I, _____ a notary public in and for the aforesaid county and state, certify that William Lester Johnson, Jr., personally appeared before me this day, and acknowledged the due execution of the forgoing instrument.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2021.

_____, Notary Public
(Print or Type Name of Notary Here)

My Commission Expires: _____

State of North Carolina

County of _____

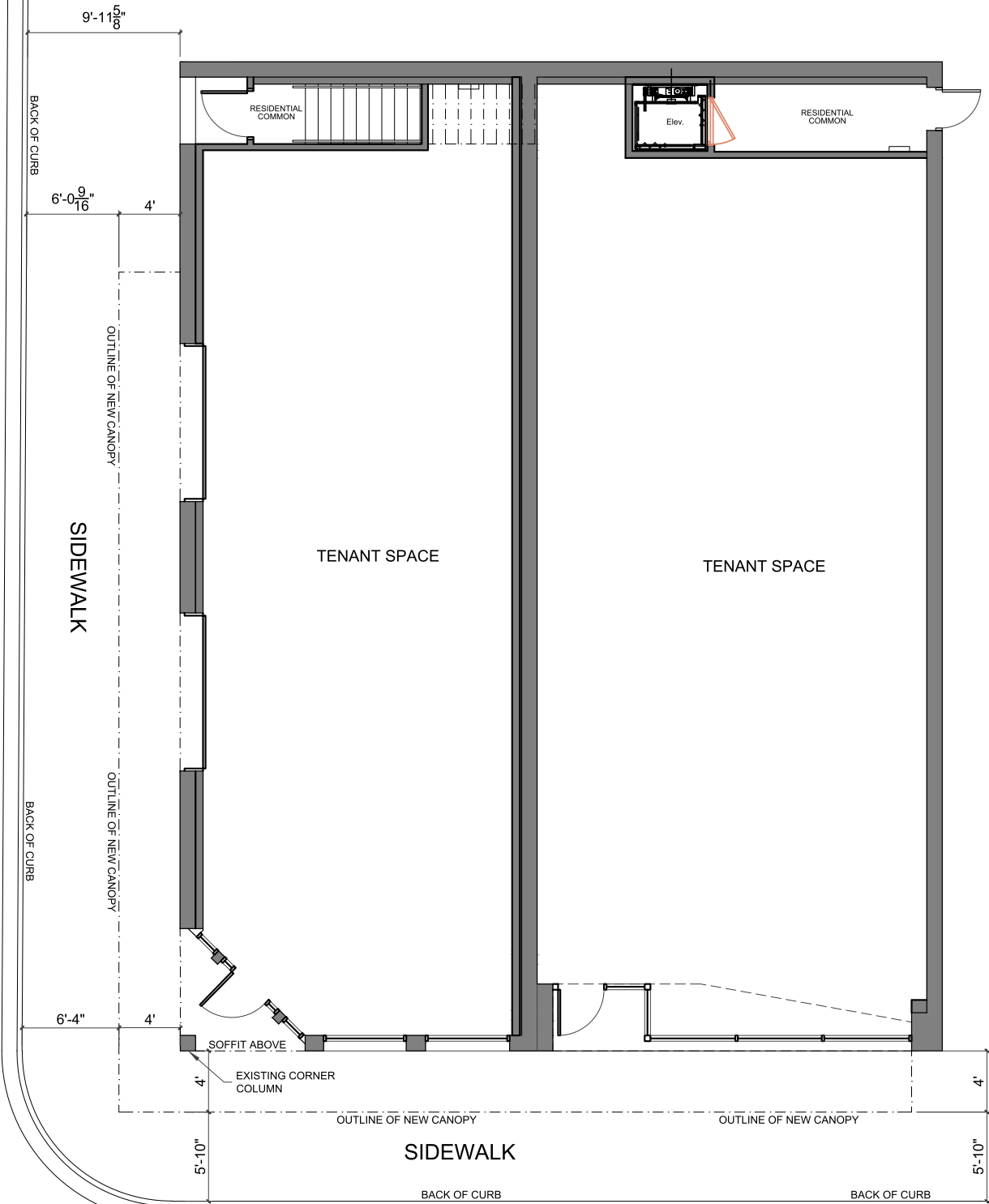
I, _____ a notary public in and for the aforesaid county and state, certify that Christopher C. Knott, personally appeared before me this day, and stated he is a managing member of KNOTTY PROPS, LLC, a limited liability corporation organized and existing under the laws of the State of North Carolina, that the foregoing agreement with the City of Greenville carries on in the usual way the company's business, and acknowledged the due execution of the contract on behalf of the company.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2021.

_____, Notary Public
(Print or Type Name of Notary Here)

My Commission Expires: _____

ATTACHMENT 'A'



CANOPY PLAN
SCALE: NTS

BWARCHITECTURE

www.bwarchitecture.info

Office: 252.355.1300
100 A Oakmont Dr.
Greenville, NC 27858

Date: 7.1.2021

Project No: 19031

Revision No:

R-1

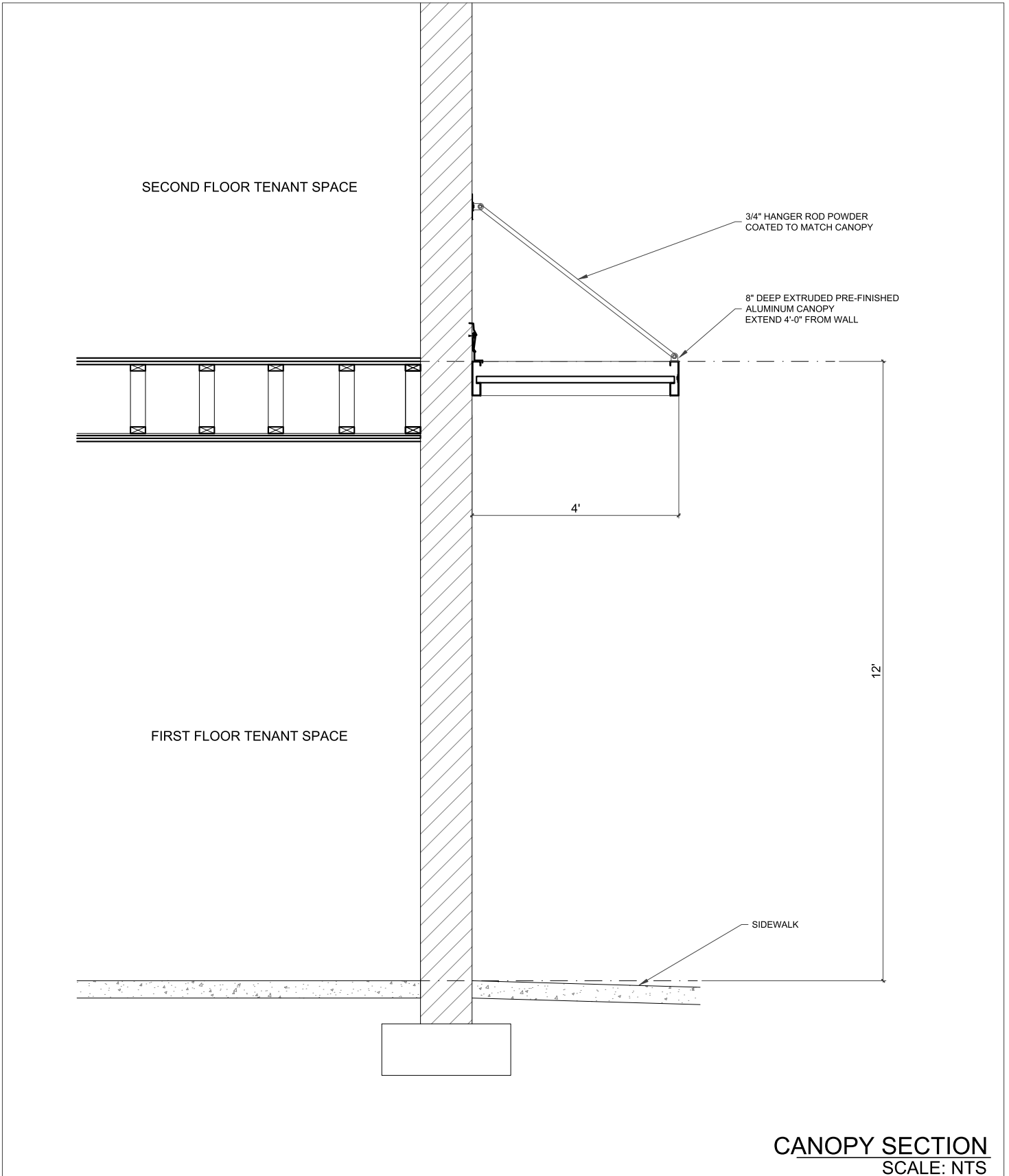
Drawing No:

A101

Canopy Plan For:

501 EVANS ST.

Greenville, NC 27858



BWARCHITECTURE www.bwarchitecture.info Office: 252.355.1300 100 A Oakmont Dr. Greenville, NC 27858	Date: 7.1.2021 Project No: 19031	Revision No:	Canopy Plan For: 501 EVANS ST. Greenville, NC 27858
		R-1	
		Drawing No:	
		A102	

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City of Greenville, North Carolina

Meeting Date: 08/09/2021

-
- Title of Item:** Acquisition of Property at 110 Greenbriar Drive for Stormwater Purpose
- Explanation:** The City proposes to purchase a parcel (residential property" or "property") located at 110 Greenbriar Drive (Parcel # 07607) for future use by the Engineering Department for stormwater construction and repairs (Greenbriar Capital Improvement Project). The Greenbriar Capital Improvement Project involves pipe replacement, bank stabilization and daylighting sections of existing stormwater pipe.
- The City plans to demolish the dwelling on the property and daylight the streams which will improve flood storage, water quality treatment and save City money in long-term maintenance cost.
- The City's real estate agent has negotiated a contract to purchase the property for \$150,000. The current owners are Rudolph Mebane Jr. and Angela Mebane. Attached is the option contract signed by the owners. City staff (Engineering Department) estimates the acquisition of this property will save the City approximately \$410,000 in stormwater construction costs and repairs.
- The owners have a tenant residing at the property. Once the tenant finds a new housing unit and submits verification of a lease, the City, in compliance with federal guidelines per the Uniform Act, proposes to pay a lump sum amount of relocation funds to the tenant up to \$38,000.
- Fiscal Note:** The purchase price is \$150,000 and rental relocation assistance up to \$38,000.
- Recommendation:** City Council approve acquisition of above described property (land and dwelling) at 110 Greenbriar Drive for purchase price of \$150,000, and rental relocation assistance of up to \$38,000 (upon verification that tenant has entered into a new lease).
- The City Manager or Mayor is authorized to sign any written contracts or instruments to effectuate acquisition of the property and provide relocation rental assistance to tenant as described herein.
-

ATTACHMENTS

 [August 2021 - Option to Purchase- City purchase for stormwater purposes.pdf](#)

THIS OPTION AGREEMENT is entered into this 26 day of July, 2021, by and between Rudolph Mebane Jr. and Angela B. Mebane (the "Sellers" or "Seller", singular includes the plural); and City of Greenville (the "Buyer").

WITNESSETH:

WHEREAS, the Seller is the owner in fee simple of that certain parcel of land located at 110 Greenbriar Drive, Greenville, NC 27834, and being described on **Exhibit A** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Seller is willing to grant to Buyer, and Buyer desires to acquire from Seller, an option to purchase all of the Property under the terms and conditions set forth in this Option Agreement.

NOW, THEREFORE, for and in consideration of the sum of \$1.00 paid by Buyer to Seller concurrent with the execution of this Agreement (the "Option Money") and other good and valuable consideration, Seller hereby grants and conveys to Buyer, its successors and assigns, the right and option to purchase all of the Property described herein (the "Option") under the following terms and conditions:

1. PROPERTY. The Property is identified on **Exhibit A** attached hereto and incorporated herein by reference.
2. OPTION PERIOD. This Option shall be for a period beginning on the date hereof and ending at 5:00 p.m. EST on September 1, 2021.
3. EXERCISE. **Buyer may exercise this Option at any time prior to the expiration of the Option Period by obtaining City Council approval.** The Buyer shall provide notice to Seller of the exercise of the option at the address provided in Paragraph 7 of this Agreement.
4. PURCHASE PRICE UPON EXERCISE. In the event the Buyer exercises this Option during the Option Period, the Purchase Price for the Property shall be \$150,000.00, which will be paid by wire transfer, certified check or other immediately available funds at closing. The Option Money paid by Buyer to Seller shall be non-refundable and will apply towards the Purchase Price if Buyer exercises the Option granted hereunder.
5. CLOSING UPON EXERCISE. Upon exercise of the Option as provided in Section 3 above, Buyer and Seller shall close the sale of the Property at a mutually agreeable time and place but in any event not later than ninety (90) days after exercise of the Option. At closing, Seller shall deliver to Buyer Seller's general warranty deed conveying marketable fee simple title to the

Option Agreement
Page 2

Property to Buyer, or its assigns, free and clear of the claims of others and subject only to highway and road rights of way, restrictive covenants, if any, of record in the Pitt County Public Registry, ad valorem taxes for the year of closing which will be prorated at closing, and any and all federal, state or local regulations related to zoning, land use or development of the Property. At closing, Buyer shall deliver to Seller the purchase price outlined in Section 4 above. Seller and Buyer shall pay their respective costs of such closing as is customary in Pitt County, North Carolina, to include as follows: Seller shall pay for the cost of deed stamps, Seller's pro rata share of ad valorem property taxes and the cost of preparation of Seller's deed; and Buyer shall pay the cost of title examination, the premium for title insurance if so desired, and Buyer's pro rata share of the ad valorem property taxes. Each party shall pay its own attorney's fees.

6. TERMINATION. Upon expiration of the Option Period without the Buyer exercising its Option, then (i) this Agreement shall be deemed to have been terminated; and (ii) neither Seller nor Buyer shall have any further rights or obligations hereunder.

7. NOTICE. Any notices or other communications required by this Option shall be in writing, signed by the party giving such notice or by the party's attorney, and shall be deemed to have been given: (i) when actually delivered in any manner, (ii) after being deposited with the United States Postal Service, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the party to whom such notice is intended to be given at the address set forth below, or (iii) when delivered to a nationally-recognized overnight courier delivery service, charges prepaid, properly addressed to the party to whom such notice is intended to be given at the address set forth below. Notices shall be deemed received: (i) when actually received in any manner, (ii) three business days after being deposited with the United States Postal Service as described above, or (iii) one business day after delivery to an overnight delivery service. Until notice of a change of address is given to the other party in accordance with the provisions of this Section, notices shall be delivered, addressed or directed as follows:

To Seller: Rudolph Mebane Jr. and Angela B. Mebane
229 Commerce St.
Greenville, NC 27858

To Buyer: City of Greenville
Ann E. Wall
City Manager
P.O. Box 7207
Greenville, NC 27835

8. ASSIGNMENT. This Option may be assigned by Buyer without the prior written consent of Seller.

9. MEMORANDUM. Upon the request of either party, Buyer and Seller agree to execute a memorandum or a short form of this Option Agreement for recordation in the office of the Register of Deeds of Pitt County. In the event that a memorandum of this Option is recorded, Buyer and Seller also agree to execute a notice of termination of this Option upon any termination in accordance with its terms, for recordation in the office of the Register of Deeds of Pitt County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this the date first above written.

SELLER:

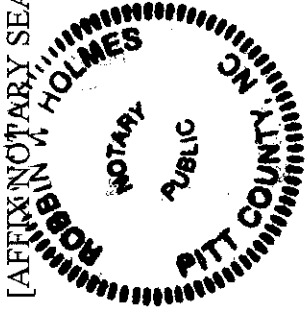
Rudolph Mebane Jr.
Name: Rudolph Mebane Jr.
Title: Owner

STATE OF NORTH CAROLINA
COUNTY OF Pitt

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Rudolph Mebane Jr.

Witness my hand and Notary Seal this the 24 day of July, 2021.

[AFFIX NOTARY SEAL BELOW]



Notary Signature: Robbin W. Holmes

Notary Print Name: Robbin W. Holmes

Notary Public

My Commission Expires:

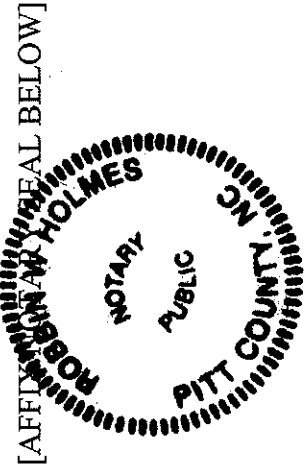
10/16/2024

SELLER:
Angela Mebane
Name: Angela Mebane
Title: Owner

STATE OF NORTH CAROLINA
COUNTY OF Pitt

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Angela Mebane.

Witness my hand and Notary Seal this the 26 day of July, 2021.



Notary Signature: Robbin W. Holmes
Notary Print Name: Robbin W. Holmes
Notary Public

My Commission Expires: 10/16/2024

BUYER:
CITY OF GREENVILLE
A North Carolina municipal corporation

BY: _____
Name: P. J. Connelly
Title: Mayor

STATE OF NORTH CAROLINA
COUNTY OF _____

Option Agreement
Page 5

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Witness my hand and Notary Seal this the _____ day of _____, 2021.

[AFFIX NOTARY SEAL BELOW]

Notary Signature: _____

Notary Print Name: _____
Notary Public

My Commission Expires:

EXHIBIT A

DESCRIPTION OF PROPERTY BEING PURCHASED

110 Greenbriar Drive, Greenville, NC 27834
(PARCEL NUMBER 07607)

LYING AND BEING IN THE CITY OF GREENVILLE, PITT COUNTY, NORTH CAROLINA AND BEING ALL OF LOT 1, BLOCK "F" IN FAIRLANE SUBDIVISION, ADDITION II, AS SHOWN ON MAP OF RECORD IN MAP BOOK IO, PAGE 101, PITT COUNTY REGISTRY, AND BEING THE IDENTICAL PROPERTY DESCRIBED IN DEED OF RECORD IN BOOK 1356, PAGE 673 IN THE PITT COUNTY REGISTRY.

SAID PROPERTY IS COMMONLY KNOWN AS 110 GREENBRIAR DR., GREENVILLE, NC 27834.



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Contract for Services with Uptown Greenville

Explanation: Since 2010, the City of Greenville and Uptown Greenville have agreed upon an annual program of activities to be carried out by the organization in an effort to market, support, retain, and recruit businesses in the uptown district. In connection with those services, previous City Councils have authorized funding for agreed-upon activities.

In the City's 2021-2022 fiscal year budget, \$50,000 was appropriated for Uptown Greenville following the development and execution of a contract for services. Services included in this contract are:

1. Working with the City in areas of business recruitment and retention programs
2. Developing and organizing events to help promote uptown beautification
3. Event organization, promotion and sponsorship, such as Pirate Fest, Freeboot Friday, Greenville Grooves, State of the District, Umbrella Market; and assisting the City with Greenville Gives and National Night Out
4. Assisting with public input
5. Fundraising for specified facilities determined to be needed
6. Assisting with economic development efforts

This represents a continuation of the City's partnership with the Uptown Greenville organization.

Fiscal Note: \$50,000.00 was authorized by action of City Council in the 2021-2022 Fiscal Year budget.

Recommendation: City Council to consider the attached contract for services and direct the City Manager and staff to execute the contract.

ATTACHMENTS

 [Uptown Greenville Contract 2021-2022.pdf](#)

NORTH CAROLINA
PITT COUNTY

CONTRACT FOR SERVICES

This CONTRACT is made the ___ day of _____, 2021, by and between the City of Greenville, a North Carolina municipal corporation (CITY), and Evergreen of Greenville, Inc. doing business as Uptown Greenville, a North Carolina nonprofit corporation (referred to as either “UPTOWN” or “CONTRACTOR”).

WITNESSETH

1. Consideration.

The consideration of this CONTRACT are the services to be performed by UPTOWN for the CITY, and the sum of \$50,000 paid by the CITY to UPTOWN pending submission of a work plan from UPTOWN.

2. General Work to be Performed.

UPTOWN will use its best efforts to publicize the economic, educational, social, and cultural benefits of the Uptown business district of Greenville; assist in recruiting business and residents to the Uptown area; and provide information on the Uptown business district of Greenville to prospective businesses and residents. UPTOWN will publicize and promote the City’s urban revitalization efforts and plans through the normal business activities of UPTOWN.

3. Specific Work to be Performed.

UPTOWN will perform the following specific services:

A. BUSINESS RECRUITMENT AND RETENTION

- 1) UPTOWN shall, in cooperation with the CITY, and other partners as appropriate, assist with implementation of a comprehensive economic development program for the district. UPTOWN’s economic development efforts shall attempt to retain and recruit retail businesses in the district, recruit new employers to the district and facilitate commercial and residential development. Economic development services and activities performed, supported and/or coordinated by UPTOWN may include but are not limited to, corporate and retail visitation programs, real estate developer outreach, available properties database, participation in trade shows and association events, provision of technical assistance to and/or potential new businesses in the district, and data collection/publication. UPTOWN’S marketing work will maintain strong ties to other regional economic development partners to maximize information sharing and resources.

- 2) UPTOWN shall, in cooperation with the CITY, assist the selected investors/developers with projects in the designated area specified in section six (6).

B. UPTOWN BEAUTIFICATION

- 1) Host annual window decorating competition.
- 2) Manage banner system
- 3) Provide physical enhancement to the district, which may include sidewalk cleaning, trash removal, planter bed maintenance, and decorative or holiday lighting and organized cleanup days

C. SPECIAL EVENTS, PROMOTIONS & PRIVATE SUPPORT

- 1) Serve as primary organizer and sponsor for the following events:
 - PirateFest
 - First Friday ArtWalk Series
 - Dickinson After Dark
 - Freeboot Friday
 - National Night Out
 - Uptown Umbrella Market
 - Greenville Grooves
 - Greenville Gives
 - State of the District

- 2) Credit the CITY as a major sponsor for the following events:
 - PirateFest
 - Dickinson After Dark
 - Freeboot Friday
 - National Night Out
 - Uptown Umbrella Market
 - Greenville Grooves
 - Greenville Gives
 - State of the District

(Note: The CITY will note Uptown and City partnership events on the City calendar and in email notifications.)

- 3) Provide written request of all event support needs to the Special Events Coordinator 45 days prior to the event date.
- 4) Work with the CITY 's special event coordinator as an advisor to outside organization interested in holding special events withing the district. In an effort to expand the number of events in the Uptown district, organize a "How to Event

in the Uptown District” information session for the public alongside the CITY’s event coordinator.

D. ASSISTING WITH PUBLIC INPUT

- 1) The CITY will work with UPTOWN to coordinate stakeholder meetings on policy changes in advance of public input sessions.
- 2) Upon request from the CITY, UPTOWN shall help build consensus for public infrastructure or other identified projects in the form of public input gathering, surveying, and communication of plans.
- 3) Upon request from the CITY, UPTOWN shall coordinate and conduct Public Input Forums regarding future redevelopment plans.
- 4) Upon request from the CITY, UPTOWN will assist with communicating road closures and organizing community meeting to keep the Uptown community informed of road closures.

E. FUNDRAISING FOR UPTOWN IMPROVEMENTS

- 1) UPTOWN, working in conjunction with the CITY, shall assist with fundraising efforts to fund facilities determined to be needed.

F. ASSIST WITH ECONOMIC DEVELOPMENT EFFORTS

- 1) UPTOWN, working in conjunction with the CITY, shall assist with economic development efforts.
- 2) Continue to strengthen the connection that residents, employees and visitors have to the district and increase the district’s reputation as an attractive location for businesses and employees via year round programming.
 - a. Use demographic data and market research to identify opportunities for new entrepreneurs and seek to attract new investment into Uptown. To create and maintain downtown's mixed use character, help recruit retail, restaurant, hospitality, residential, mixed-use and office prospects.
 - b. Maintain information about real estate available for lease or sale, economic incentive programs including tax credits, special zoning and land use codes, parking data and development trends.
 - c. Will use a wide range of communication for promotion through news media contacts, press releases, a newsletter, web site, social media and other means.

- d. Will help retailers and other downtown businesses with assistance with regulatory and financing issues, parking and public safety, events and promotion.
- e. Through its knowledge of uptown real estate, development trends and ownership patterns will confidentially help prospective investors identify optimum locations for shops, office, residences or hotels for acquisition, location or development.

G. TARGETED VISITOR MARKETING AND COMMUNICATIONS

- 1) Fund targeted marketing, communications and promotional efforts that benefit area retailers, restaurants and hotels.
- 2) Advertise, promote and showcase downtown events, places and people.
- 3) Advertisement campaigns for holiday season, restaurant week, retail and others, as needed.

H. UPTOWN will provide City Council with a work plan, as requested. The workplan will be included as an addendum upon submission

4. Schedule of Payments.

Payment of \$25,000 will be made by the CITY to UPTOWN on a biannual basis with the first payment to be made within 30 days of the effective date of this contract for services, the second payment to be made on or about March 31, 2021 upon completion of deliverable outcomes.

5. Reports.

Prior to the CITY making the second payment as described in Section 4, UPTOWN shall provide a written report to the City Council of the CITY of the significant achievements of UPTOWN with regard to the work performed under Sections 3 (H) of this CONTRACT. The report shall include a financial statement for the previous fiscal year.

6. Designated Area.

The map included as an addendum represents the Uptown district.

7. Duration and Amendment.

This CONTRACT shall commence on September 10, 2021, and terminate on September 9, 2022. This CONTRACT may be amended with the consent of both parties when such an amendment is made in writing and signed by an authorized officer of each part

8. Notice.

This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Ann E. Wall, City Manager
City of Greenville
P.O. Box 7207
Greenville, NC 27835
Email: awall@greenvillenc.gov

To Uptown:

Uptown Greenville
408 S Evans Street, Suite 102
PO Box 92
Greenville, NC 27835
Attention: Meredith Hawke
Email: meredith@uptowngreenville.com

Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

9. Indemnification.

(a) To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines,

penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

10. Termination for Convenience (“TFC”).

Procedure. Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate.

Payment. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to

any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

11. Choice of Law and Forum.

This contract shall be deemed made in Pitt County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Pitt County. Such actions shall neither be commenced in nor removed to federal court.

12. E-Verify Requirements.

If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract.

If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

IN WITNESS WHEREOF, the parties hereto have executed this contract, in duplicate originals, this the day and year first written above.

EVERGREEN OF GREENVILLE, INC.
dba UPTOWN GREENVILLE

Meredith Dzeko, Executive Director

ATTEST:

Secretary

CITY OF GREENVILLE

Ann E. Wall, City Manager

ATTEST:

Valerie P. Shiuwegar, City Clerk

APPROVED AS TO FORM:

Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Byron Hayes, Director of Financial Services

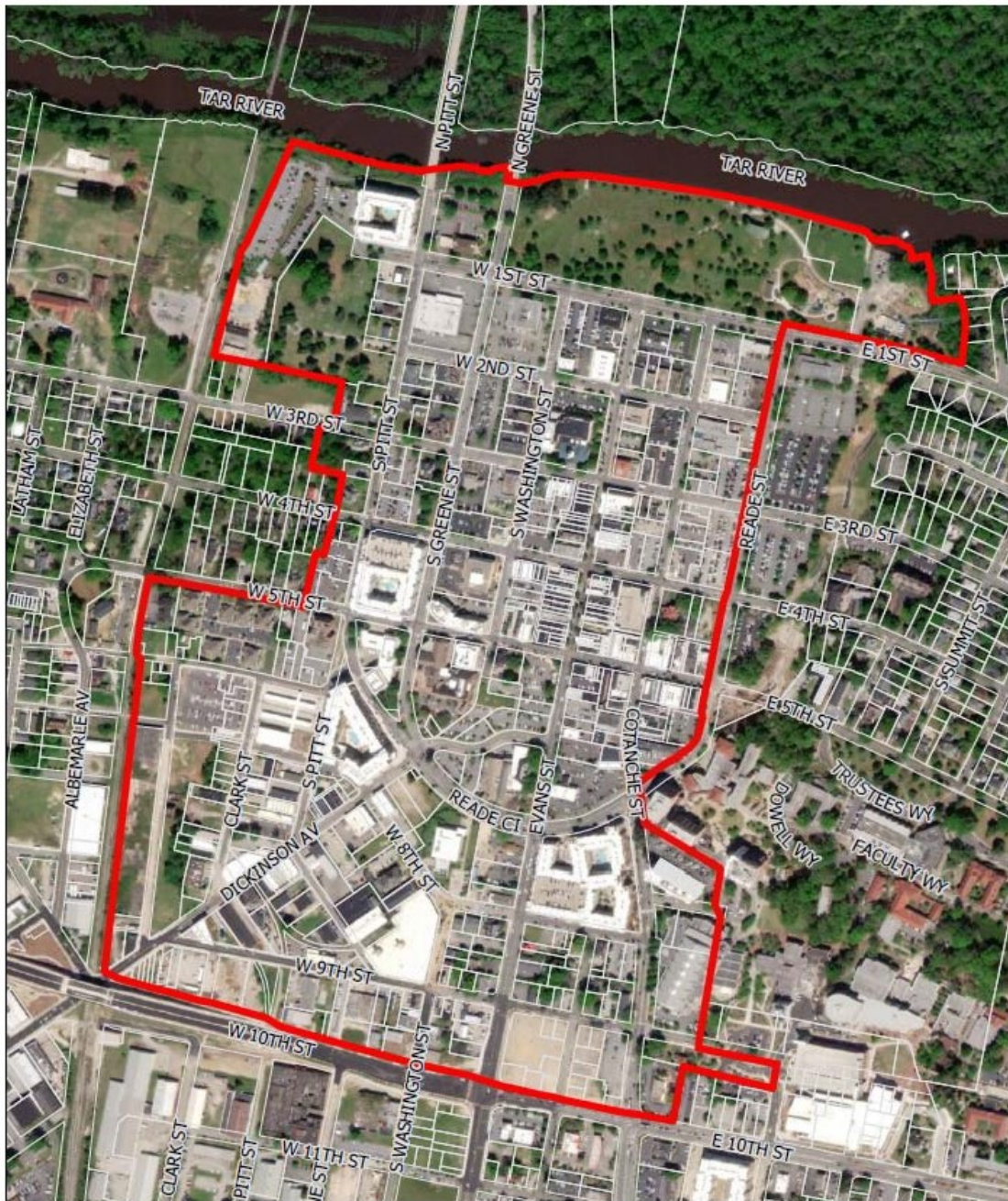
Account Number _____

Project Code (if applicable) _____

Addendum A:

MAP OF UPTOWN

Addendum





City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Budget Ordinance Amendment and Reimbursement Resolution for Greenville Utilities Commission's Electric Capital Project Point of Delivery #3 to Simpson Substation Transmission Loop

Explanation: Greenville Utilities Commission's transmission project includes the construction of a 115 kV transmission line for Point of Delivery #3 to Simpson substation. The line will also feed new Hudson's Crossroads substation and will complete the loop from G230S to Simpson substation. GUC staff proposed that the project budget be amended from \$300,000 to \$600,000 with long-term debt to facilitate acquisition of easements, railroad crossing permits, and design of transmission loop. The GUC Board of Commissioners adopted the capital budget amendment and reimbursement resolution at its July 15, 2021 regular Board meeting and recommends similar action by the City Council.

Fiscal Note: No costs to the City.

Recommendation: Adopt the attached reimbursement resolution and budget ordinance

ATTACHMENTS

- [📄 Ordinance Amending 16-039 GUC ECP10168.pdf](#)
- [📄 Reimbursement Resolution for Electric Capital Project ECP10168.pdf](#)

ORDINANCE NO. 21- _____
 CITY OF GREENVILLE, NORTH CAROLINA
 TO AMEND A CAPITAL PROJECT BUDGET (ORDINANCE NO. 16-039)
 POD #3 TO SIMPSON SUBSTATION 115 KV TRANSMISSION LOOP

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section I. The Capital Projects Budget is amended, so that as amended it shall read as follows:

	Current Budget	Change	Proposed Budget
<u>Revenues</u>			
Long-Term Debt	\$300,000	\$300,000	\$600,000
	\$300,000	\$300,000	\$600,000
<u>Expenditures</u>			
Project Costs	\$300,000	\$300,000	\$600,000
	\$300,000	\$300,000	\$600,000

Section II. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section III. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 2021.

P. J. Connelly, Mayor

Attest:

Valerie Shiuwegar, City Clerk

RESOLUTION NO. _____
RESOLUTION DECLARING THE INTENTION OF THE
CITY COUNCIL OF THE CITY OF GREENVILLE TO REIMBURSE THE
GREENVILLE UTILITIES COMMISSION, OF THE CITY OF GREENVILLE, NORTH
CAROLINA, A BODY POLITIC DULY CHARTERED BY THE STATE OF NORTH
CAROLINA, FROM THE PROCEEDS OF ONE OR MORE FINANCING(S) FOR
CERTAIN EXPENDITURES MADE AND TO BE MADE IN CONNECTION WITH THE
ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS

WHEREAS, in accordance with Chapter 861 of the 1991 Session Laws of North Carolina, the Greenville Utilities Commission (the “Commission”) has been created for the proper management of the public utilities of the City of Greenville, North Carolina (the “City”), comprising an electric system, a natural gas system, a sanitary sewer system and a water system within and without the corporate limits of the City, (collectively the “Combined Enterprise System”) with responsibility for the entire supervision and control of the management, operation, maintenance, improvement and extension of the Combined Enterprise System; and

WHEREAS, Section 1.150-2 of the Treasury Regulations (the “Regulations”) prescribes specific procedures which will be applicable to certain bonds, notes or other indebtedness (“Debt”) issued by or on behalf of the Commission and the City including, without limitation, a requirement that the City declare official intent to reimburse certain expenditures with proceeds of Debt to be incurred prior to, or within sixty (60) days of, payment of the expenditures to be reimbursed;

WHEREAS, the Commission has determined to pay certain expenditures (the “Expenditures”) incurred no more than 60 days prior to the date hereof and thereafter relating to the acquisition and construction of certain improvements (collectively, the “Additional Improvements”) more fully described below;

WHEREAS, the Additional Improvement consists of an electric substation transmission loop project; and

WHEREAS, the City Council of the City has determined that those monies previously advanced by the Commission no more than 60 days prior to the date hereof to pay such Expenditures are available only on a temporary period and that it is necessary to reimburse the Commission for the Expenditures from the proceeds of one or more issues of Debt;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL as follows:

Section 1. The City hereby declares concurrence with the Commission’s intent to reimburse the Commission from the proceeds of the Debt for the Expenditures made with respect to the Additional Improvements no more than 60 days prior to the date hereof and thereafter.

Section 2. Each Expenditure was or will be either (a) of a type chargeable to capital account under general federal income tax principles (determined as of the date of the Expenditures), (b) the cost of issuance with respect to the Debt, (c) a non-recurring item that is not customarily payable from current revenues of the Combined Enterprise System, or (d) a grant to a party that is not related to or an agent of the Commission or City so long as such grant does not

impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Commission or City.

Section 3. The principal amount of the Debt estimated to be issued to reimburse the Commission for Expenditures for the Improvements is estimated to be not more than \$600,000.

Section 4. The Commission and the City will make a reimbursement allocation, which is a written allocation by the Commission and the City that evidences the Commission's use of proceeds of the Debt to reimburse an Expenditure no later than 18 months after the later of the date on which such Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The City recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, (expenditures by "small issuers" based on the year of issuance and not the year of expenditure), and expenditures for construction projects of at least 5 years.

Section 5. This declaration of official intent is made pursuant to Section 1.150-2 of the Treasury Regulations.

Section 6. The resolution shall take effect immediately upon its passage.

Adopted this the 9th day of August, 2021.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar
City Clerk

After consideration of the foregoing resolution, Council member _____ moved for the passage thereof, which motion was duly seconded by Council member _____, and the foregoing resolution was passed by the following vote:

Ayes: _____
_____.

Noes: _____.

* * * * *

I, Valerie Shiuwegar, Clerk of the City of Greenville, North Carolina DO HEREBY CERTIFY that the foregoing accurately reflects the proceedings as recorded in the minutes of the City Council of said City at a meeting held on 9th day of August, 2021 and contains the verbatim text of Resolution No. __-21 which was duly adopted by said City Council at said meeting.

WITNESS my hand and the official seal of said City, this 9th day of August, 2021.

City Clerk

[SEAL]



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Various tax refunds greater than \$100

Explanation: Pursuant to North Carolina General Statute 105-381, refunds are being reported to City Council. These are refunds created by a change or release of value for City of Greenville taxes by the Pitt County Tax Assessor. Pitt County Commissioners have previously approved these refunds; they are before City Council for their approval as well. These refunds will be reported as they occur when they exceed \$100.

The Director of Financial Services reports refunds of the following taxes:

Payee	Adjustment Refunds	Amount
Daniel Grey Lee	Individual Personal Property	214.09
State Employee Credit Union	Real Estate	523.51
Bobby Ray Warren	Individual Personal Property	141.64
Ladigen Brown	Individual Personal Property	341.64
Grover Grass	Individual Personal Property	653.21
God's Plan Trucking	Individual Personal Property	127.05
Brian Haun	Individual Personal Property	123.78
Bryan Haun	Individual Personal Property	171.14
Renee Love	Individual Personal Property	179.43
Erika Madrigal	Individual Personal Property	275.66
Edward Harvey Mann	Registered Motor Vehicle	107.19
Desmond Gerell Sabb	Registered Motor Vehicle	120.90
Joseph Irwin Pierce	Registered Motor Vehicle	141.39
Michael Ray Best	Registered Motor Vehicle	160.58
Janice Stanley Wortington	Registered Motor Vehicle	192.21
James Earl Jones	Registered Motor Vehicle	405.58
Greenville Utilities Commission	Registered Motor Vehicle	411.76
Carteret County	Registered Motor Vehicle	564.39
John Franklin Thompson	Registered Motor Vehicle	347.77

Rodney Devard Clemons	Registered Motor Vehicle	311.18
Louis Hosandove Chapman	Registered Motor Vehicle	281.49
Amanda Hollingsworth Mills	Registered Motor Vehicle	275.95
Lisa Barnhill Coward	Registered Motor Vehicle	269.06
Charlie Curtis Jones	Registered Motor Vehicle	264.04
Edwin Luis Santiago	Registered Motor Vehicle	220.71
Keith Edward Wainright	Registered Motor Vehicle	187.87
Brody Andrew Glidden	Registered Motor Vehicle	187.75
Cheryl Pitts Windham	Registered Motor Vehicle	222.92
Todd Joseph Styles	Registered Motor Vehicle	176.84
Mustafa Ibrahim Selim	Registered Motor Vehicle	142.47
Thomas Andrew Ireland	Registered Motor Vehicle	139.47
Austin Lee Shue	Registered Motor Vehicle	139.35
Lori Kerwin Tyson	Registered Motor Vehicle	136.96
Kendell Clay Thornton	Registered Motor Vehicle	118.90
Louis Robinson III	Registered Motor Vehicle	494.17
Dannie Mclawhorn	Registered Motor Vehicle	137.10
Juan Cardona	Registered Motor Vehicle	124.10
Bobby Coggins	Registered Motor Vehicle	120.45
Benjamin Norris	Registered Motor Vehicle	111.43
Javon Brumsey	Registered Motor Vehicle	424.64
Cedric Wilkins	Registered Motor Vehicle	407.94
Wesley M Measamer CPA PA	Registered Motor Vehicle	335.91
Paul Stephen Russell	Registered Motor Vehicle	327.16
Phillip Whitehurst	Registered Motor Vehicle	307.49
Wood Gerald Davidson	Registered Motor Vehicle	305.16
Shannon Willingham	Registered Motor Vehicle	295.74
Drew Vaughn	Registered Motor Vehicle	282.25
William Scott	Registered Motor Vehicle	263.94
Douglas Silvey	Registered Motor Vehicle	238.80
Lashaunda Gilbert	Registered Motor Vehicle	218.66
Nester Santiago	Registered Motor Vehicle	199.74
Raymond Langley	Registered Motor Vehicle	198.87
Lora Landreth	Registered Motor Vehicle	185.28
Daniel Lavalley	Registered Motor Vehicle	185.06
Keith Shupe	Registered Motor Vehicle	180.08
Marquis Chance	Registered Motor Vehicle	165.30
James Williford	Registered Motor Vehicle	148.31
Raul Elliott	Registered Motor Vehicle	137.86
Henry Hoell	Registered Motor Vehicle	137.86
Andrea Drake	Registered Motor Vehicle	136.72
Randall Woodard	Registered Motor Vehicle	135.63

Lou Ann Tetterton	Registered Motor Vehicle	135.53
David Cecil	Registered Motor Vehicle	130.48
Precious Melody Williams	Registered Motor Vehicle	128.63
Jeffrey Smith	Registered Motor Vehicle	127.78
James Congleton	Registered Motor Vehicle	106.48
Neis Brannan	Registered Motor Vehicle	102.78

Fiscal Note: The total refunded is \$15,215.21

Recommendation: Approval of taxes refunded by City Council



City of Greenville,
North Carolina

Meeting Date: 08/09/2021

Title of Item: Application to receive funds from the Edward Byrne Memorial Justice Assistance Grant Program

Explanation: The Bureau of Justice Assistance (BJA) annually awards agencies grant money for various needs. The BJA designates grants based on the size of a jurisdiction and crime rate.

The Greenville Police Department (GPD) has received notification that it is eligible to receive funds from the Edward Byrne Memorial Justice Assistance Grant Program in the amount of \$31,846. If approved, funds can be used to purchase equipment and supplement programming needs. GPD intends to utilize the funds for the ShotSpotter program.

The grant requires a public hearing be held before the final application can be approved and funds distributed. It should be noted that this grant is being jointly awarded to the Pitt County Sheriff's Office; they will also receive \$31,846. An interlocal agreement has been prepared between the City and County for distribution of these funds.

Fiscal Note: GPD has the potential to receive grant funding in the amount of \$31,846 with no City match required.

Recommendation: Staff recommends that City Council hold the required public hearing and authorize GPD to complete the application process for the Edward Byrne Memorial Justice Assistance Grant.



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Amendment to Development Agreement Between the City of Greenville and Greenville Ventures NC, LLC for the Development of a Hotel on Evans Street in Uptown Greenville

Explanation: The City of Greenville and Greenville Ventures NC, LLC entered into a development agreement, with an effective date of September 10, 2020, for the development of a 100-room hotel on two City parcels located at 423 Evans Street in the heart of Uptown Greenville. Over the past year, Greenville Ventures has focused on project design and financing. With project financing secured, Greenville Ventures is currently in the process of seeking all final project approvals from the North Carolina Department of Insurance and the City of Greenville. However, due to the impact of COVID-19 and its corresponding impact on the hospitality industry, Greenville Ventures' ability to meet the timeline requirements as included in the adopted development agreement has been adversely impacted.

Over the last sixteen months, the COVID-19 pandemic has created a healthcare emergency across the United States of America, including the State of North Carolina and the City of Greenville. The hospitality industry was arguably one of the most impacted segments of the United States economy. As a result of the travel restrictions and other public health safety protocols that were put into place to suppress the transmission of the virus, a vast majority of hotels had to reduce their maximum occupancy capacities significantly. Many hotels actually closed during the height of the pandemic as occupancy rates were reduced to near zero. The hospitality industry as a whole transitioned its focus from expansion to just surviving the pandemic period. This resulted in decisions nationwide to delay expansion projects to a future timeframe.

For these reasons, Greenville Ventures has requested a three-month extension on the timelines included in the development agreement which are summarized as follows:

Closing Date on Conveyance of City Property

Extend the closing date on conveyance of the City property by 90 days as follows:

From: Date on or before 12 months from the effective date of the contract (i.e. September 10, 2021)

To: Date on or before 15 months from the effective date of the contract (i.e. December 10, 2021)

Approval of all Permits

Extend the approval date on permits by 90 days as follows:

From: Date on or before 12 months from the effective date of the contract (i.e. September 10, 2021)

To: Date on or before 15 months from the effective date of the contract (i.e. December 10, 2021)

Greenville Ventures is currently moving forward with the intention of beginning hotel construction on or before the contract extension date of December 10, 2021.

Included with the agenda item are the following:

- Summary of Proposed Contract Amendment
- Contract Amendment
- Copy of Original Development Agreement Adopted by Council in August, 2020

Fiscal Note: There is no fiscal impact with concerns to the requested contract amendment.

Recommendation: Consider Amendment to the Development Agreement Between the City of Greenville and Greenville Ventures NC, LLC for the Development of a Hotel on Evans Street in Uptown Greenville

ATTACHMENTS

-  [Summary of Evans Hotel Contract Amendment.pdf](#)
-  [Evans Hotel Contract Amendment.docx](#)
-  [Evans_Hotel_Agreement_Approved-a.pdf](#)

City of Greenville
 Evans Street Hotel Development Contract With Greenville Ventures, LLC
 Proposed Contract Amendment

Effective Date of Adopted Development Agreement: September 10, 2020

Contract Term		Adopted Development Agreement	Proposed Amendment to the Adopted Development Agreement
1.	Closing Date on Convenayce of Property and Approval of Permits	On or Before 12 Months From Effective Date of Contract (i.e. September 10, 2021)	On or Before 15 Months From Effective Date of Contract (i.e. December 10, 2021)

NORTH CAROLINA
COUNTY OF PITT

AMENDMENT TO
AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT, made and entered into this 9th day of August, 2021, by and between GREENVILLE VENTURES, LLC, a Florida limited liability company, Party of the First Part and hereinafter sometimes referred to as the “Buyer”, and the City of Greenville, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina, Party of the Second Part and hereinafter sometimes referred to as the “Seller”.

WITNESSETH:

WHEREAS, the parties hereto entered into an Agreement dated September 10, 2020 (“Original Agreement”), relating to the sale and purchase and development of property known and designated as Lot one (1) described as .12 acres (Pitt County tax parcel 51695) and Lot two (2) described as .07 acres (Pitt County tax parcel 14486), which are more particularly described in Exhibit A of the Agreement and which are located in the City of Greenville, North Carolina, said Agreement being hereinafter referred to as the AGREEMENT;

WHEREAS, the AGREEMENT specified the terms by which a hotel would be developed by the Buyer on the said property as described in Exhibit A; and

WHEREAS, the AGREEMENT terms specified that closing on the conveyance of the property described in Exhibit A would occur no later than twelve months from the effective date of the AGREEMENT, which is September 10, 2020; and

WHEREAS, the AGREEMENT terms specified that the approval of all City permitting related to the development of the hotel by the Buyer would occur no later than twelve months from the effective date of the AGREEMENT, which is September 10, 2020; and

WHEREAS, the COVID-19 pandemic created a significant healthcare emergency across the United States of America, including the State of North Carolina, and the City of Greenville; and

WHEREAS, as a result of said pandemic, the hospitality industry was arguably one of the most impacted segments of the United States economy; and

WHEREAS, the occupancy rates for existing hospitality establishments across the country reduced significantly during the period of March, 2020 and May, 2021; and

WHEREAS, the healthcare crisis created by the COVID-19 pandemic, and its corresponding impact on the hospitality industry, has adversely impacted the Buyer's ability to meet the timeline requirements included in the AGREEMENT; and

WHEREAS, both the Buyer and the Seller desire to amend the AGREEMENT by extending the deadline to close on the sale and purchase of the property described in Exhibit A by ninety (90) days; and

WHEREAS, both the Buyer and the Seller desire to amend the AGREEMENT by extending the deadline to acquire all approvals and permits for the project by ninety (90) days.

NOW, THEREFORE, the parties hereto agree to amend the ORIGINAL AGREEMENT as follows:

- A. In the original agreement, the first paragraph states that the original agreement is made by and between Greenville Ventures, LLC ("Buyer") and the City of Greenville, N.C. ("Seller"). The name of the Buyer is hereby changed to Greenville Ventures NC, LLC.
- B. In the original agreement, Paragraph 3 (titled Closing) provides the Closing shall take place on a regular business day on or before the date that is twelve (12) months following the Effective Date of this Agreement. The date for closing is extended by ninety (90) days,

and the Closing shall take place on a regular business day on or before the date that is fifteen (15) months following the Effective Date of this Agreement.

- C. In the Original Agreement, Paragraph 6b (titled Development Approvals Contingency) provides the Buyer shall have an initial period of twelve (12) months following the Effective Date, to acquire all approvals and permits for the project. The date to acquire all approvals and permits for the project is extended by ninety (90) days, and the Buyer shall have an initial period of fifteen (15) months following the Effective Date, to acquire all approvals and permits for the project.
- D. Exhibit B, bullet point one, in the Original Agreement provided that the Buyer shall apply for a building permit for the project within twelve (12) months of the final execution of the agreement. The date to acquire all approvals and permits for the project is extended by ninety (90) days, and the Buyer shall apply for a building permit for the project within fifteen (15) months of the final execution of the agreement. In the event a building permit for the project is not applied for within the fifteen (15) month period, the Seller, in its sole discretion, may refund any payments made by Buyer less the amount of the deposit and the ownership of the property will revert to the Seller.
- E. Exhibit C, bullet point One, sub-bullet point four in the Original Agreement provided that the Hotel Developer shall submit application for building permit for the project within twelve (12) months of the Effective Date of the Agreement. The date to acquire all approvals and permits for the project is extended by ninety (90) days, and the Hotel Developer shall submit application for building permit for the project within fifteen (15) months of the Effective Date of the Agreement.

All remaining terms and conditions of the ORIGINAL AGREEMENT not amended by this Amendment to Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Development Agreement in duplicate originals, one of which is retained by each of the parties, as of the day and year first written above.

CITY OF GREENVILLE

BY: _____ (SEAL)

P.J. Connelly, Mayor

(SEAL)

ATTEST:

BY: _____

Valerie Shiuwegar, City Clerk

GREENVILLE VENTURES NC, LLC

BY: _____ (SEAL)

John Sandlin, Manager

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that _____ personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein:

Witness my hand and Notarial Seal, this the ___ day of _____, 20__.

My Commission expires: _____

Notary Public

Notary's printed or typed name

(Official Seal)

DEVELOPMENT AGREEMENT

Between

**GREENVILLE VENTURES, LLC,
OR IT'S ASSIGNS as Buyer**

and

CITY OF GREENVILLE, N.C. as Seller

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made this ___ day of August, 2020, by and between **GREENVILLE VENTURES, LLC**, a Florida limited liability company, and its assigns ("Buyer") and **CITY OF GREENVILLE, N.C.**, a municipal corporation (alternatively referred to herein as the "Seller" or the "City").

WITNESSETH: In consideration of the mutual covenants of Seller and Buyer contained herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Property. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer in fee simple, and Buyer agrees to purchase from Seller all those parcels of Property situated, lying and being in Greenville, North Carolina, which are more particularly described in Exhibit A, attached hereto and made a part hereof (the "Property"), known and designated as Lot one (1) described as .12 acres and Lot two (2) described as .07 acres. The Property shall be together with and including all appurtenances, rights, hereditaments, privileges, easements and development rights benefiting, belonging or pertaining thereto, and any right, title and interest of Seller in and to any Property lying within the metes and bounds of the Property as shown on Exhibit A. It is Buyer's intention to pursue the development of the Property for the construction and operation of a boutique style hotel. All development will comply with governmental zoning or other regulatory requirements.

2. Purchase Price and Deposit. The Buyer shall pay at closing of the property \$203,000.00, which is the amount City Council has established as the fair market value through a method of appraisal, performed and certified by a Member Appraisal Institute (MAI) appraiser contracted with by the City, dated November 30, 2018. The Purchase Price shall be paid by Buyer to Seller at Closing (as hereafter defined) in cash or by certified check or wired funds.

Within five business (5) days following the Effective Date, (as defined in Section 30 hereof), Buyer shall deliver, in escrow, to Nexsen Pruet PLLC, as escrow agent ("Escrow Agent") the sum of Ten Thousand Dollars (\$10,000.00) (the "Initial Deposit"). Within five (5) business days following the end of the Study Period (hereafter defined in Section 6.a.), provided that the Buyer has not terminated this Agreement, the amount of the deposit shall be increased by Buyer making an additional deposit with the Escrow Agent of Ten Thousand Dollars (\$10,000.00) (the "Additional Deposit"). The Initial Deposit and the Additional Deposit so made are hereafter collectively called the "Deposit." The Deposit shall be held in a North Carolina State Bar IOLTA trust account at a financial institution designated by Escrow Agent. At Closing, the Deposit shall be paid by the Escrow Agent to Seller and applied against the Purchase Price. If the transaction contemplated by this Agreement does not close for any reason, the Deposit shall be

disbursed in accordance with the terms of this Agreement. In the event of a dispute between the parties with regard to the Escrow Funds that arises prior to Escrow Agent's disbursement of the Escrow Funds, Escrow Agent will hold the Escrow Funds until it receives joint instructions from the parties, deposit the Escrow Funds with the Clerk of Court, or disburse the funds pursuant to an order from a court of competent jurisdiction instructing Escrow Agent how and when to disburse the Escrow Funds. Seller acknowledges that Buyer's entering into this Agreement to purchase the Property and undertaking to perform such tests and studies as Buyer, in its sole discretion, shall deem reasonable and advisable, is adequate and sufficient consideration for the right to terminate this Agreement for any reason, during and within the Study Period, as defined in Section 6.a. of this Agreement.

3. Closing. Closing of the sale and purchase of the Property pursuant to this Agreement ("Closing") shall take place in Wilmington, North Carolina at the offices of Buyer's attorney or in Raleigh, North Carolina at the offices of the Escrow Agent during normal business hours. The Closing shall take place on a regular business day on or before the date that is one (1) year following the Effective Date of this Agreement. Additional contractual obligations and commitments which are accepted and agreed to by the Buyer as of the closing are specified in Exhibit B of this document.

At Closing, Seller shall execute and deliver to Buyer:

a. a duly executed and acknowledged special warranty deed (with a covenant of further assurances) conveying the Property to Buyer, in fee simple, which deed shall be in a form reasonably acceptable to Buyer, but which will have a reversionary clause in favor of the City, which will be in a form acceptable to the City in its sole discretion, as more fully described in Section 4 below.

b. a closing and settlement statement in form and substance mutually satisfactory to both parties;

c. a certificate, executed and sworn to by Seller, confirming that (i) as of the Closing Date, all of the warranties and representations set forth in this Agreement are true and correct, and all covenants and agreements set forth in this Agreement to be performed by Seller have been satisfied, (ii) Seller has delivered true, correct and complete original permits and property agreements to Buyer, and (iii) that no material adverse changes have occurred with respect to any part of the Property; and

d. any other document reasonably necessary to consummate the transactions contemplated by this Agreement, including but not limited to, such title affidavits or other instruments as Buyer's title insurance company may require as to any matters to the extent not inconsistent with Seller's obligations under this Agreement.

At Closing, Buyer shall execute and deliver to Seller:

- a. the approved settlement statement;
- b. a certificate, executed and sworn to by Buyer, confirming that as of the Closing Date, all of the warranties and representations set forth in this Agreement are true and correct, and all covenants and agreements set forth in this Agreement to be performed by Buyer have been satisfied;
- c. the Deposit and the balance of the Purchase Price, adjusted as provided by the approved settlement statement; and
- d. a deed of trust for the benefit of the City, which will be in a form acceptable to the City in its sole discretion, and as more fully described in Section 4 below.
- e. any other document reasonably necessary to consummate the transactions contemplated by this Agreement.

4. Economic Development Purposes. It is understood and agreed that the conveyance of the Property by the City to the Buyer is solely for the economic development purposes of increasing the property tax base of the City and stimulating further development and improvements in the downtown area of the City. Consequently, but for the commitment of the Buyer to make the improvements set forth in this Agreement and specifically in Exhibit B, the City would not have the authority to negotiate the sale of the property and would not have done so. Therefore, it is essential that the property be reconveyed to the City if for any reason the Buyer does not undertake and complete the improvements required by this Agreement. As a result of this, it is agreed that:

- a. The special warranty deed by which the Property will be conveyed by the City to the Developer will contain a reversionary term by which the Property will be reconveyed to the City if the Developer fails to initiate and undertake the development of the Property as required by this Agreement. Upon the Developer submitting the complete and final building permit application for the project, the reversionary clause for the property will be released by the City. The form and content of the reversionary clause will be negotiated between the parties. The form and content of the document releasing the reversionary clause shall be negotiated between the parties, but which will be acceptable in the City's sole discretion.
- b. To secure the completion of all improvements to the Property as set forth in the Agreement, the City will have deeds of trust on the Property which will provide for the development of the Property to be completed as agreed to in this Agreement. The deeds of trust will be subordinated to any deed of trust or lien necessary to secure financing for the Developer's improvements to the property. The deeds of trust will be in a form and contain terms that are negotiated between the parties, but which will be acceptable to the City, in its sole discretion. The deeds of trust will be released when the development of the Property has been completed and certificates of occupancy issued for all improvements in the Property. Provided however that if desired by the Buyer, the

Parties will negotiate in good faith to utilize a letter of credit, performance bond, or some other form of security to assure that the improvements of the Property will be completed by the Buyer.

5. Undertakings of Parties Pending Closing. Within ten (10) days following the Effective Date, Seller will deliver to Buyer, at no cost or expense to Buyer, copies of all tests, studies and surveys in Seller's possession, or in the possession of Seller's consultants or agents, relating to the Property and its operations, including, without limitation, surveys, agreements with adjacent Property owners, agreements with governmental authorities, title information, topographic maps, engineering and environmental reports, soil reports, wetland surveys, licenses and permits, land plans, building plans and specifications, utility information, real estate tax bill and assessment, permits and permit applications, any service, maintenance or management contracts, warranties, maintenance and repair records, all currently operative leases, contracts and permits, all service, maintenance or management contracts, and any other documents or materials relating to the ownership, operations and maintenance of the Property ("Seller's Property Reports"). From the Effective Date until Closing (i) Seller shall give to Buyer, its agents and representatives, full and free access to all areas of the Property during normal business hours; (ii) Buyer, its agents and representatives, shall have the right, at Buyer's cost and risk, upon reasonable prior verbal or written notice to Seller, to enter upon the Property for the purpose of making physical inspections, environmental tests, soil tests, including test borings for geotechnical purposes, and other similar inspections and studies; and (iii) Seller shall render to Buyer all reasonable assistance requested by Buyer in obtaining any permits, consents or approvals which Buyer believes to be necessary in connection with Buyer's planned use of the Property. Provided however that reasonable assistance as defined in subsection (iii), immediately preceding, shall in no way imply or be interpreted as any expectation of the City or obligation on the part of the City to take any specific action on permit applications, plan reviews or other applications which might come before the City's staff or Council. It is expressly understood that the City staff and Council retain all discretion as to acting on all regulatory matters that might come before them. If Buyer exercises its rights under subsections (i) and/or (ii) of this Section 5, prior to any entry upon the Property, Buyer, at no cost to the Seller, shall furnish Seller with a certificate of insurance, in form and content acceptable to Seller, which names the Seller as an additional insured party. The general liability insurance coverage provided by the Buyer shall have coverage limits of no less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate. If Buyer exercises its rights under subsections (i) and/or (ii) of this Section 5, Buyer shall keep the Property free and clear of any and all liens or claims resulting therefrom, shall defend, indemnify and hold harmless Seller, its partners, agents, representatives and affiliates from and against any cost, damage, liability or expense of any kind (including reasonable attorney's fees and litigation costs and expenses) for loss or damage to property and/or injuries to or death of persons arising therefrom, and, if Closing does not occur for any reason, Buyer shall restore any portion of the Property damaged by Buyer's activities on the Property to its condition immediately before such activities. The rights and obligations of the Buyer

to indemnify Seller as aforesaid under the provisions of this Section 5 shall survive Closing or any termination of this Agreement.

6. Study Period; Conditions Precedent.

a. Study Period. Buyer's obligation to purchase the Property is contingent upon Buyer's completion of Buyer's review of the Property to Buyer's satisfaction on or before the date which is one hundred eighty (180) days following the Effective Date (the "Study Period"). Such review and investigation shall be conducted at Buyer's sole cost and expense. Buyer may terminate this Agreement at any time prior to 5:00 p.m. on the last day of the Study Period by written notice to Seller. If this Agreement is so terminated by Buyer prior to the end of the Study Period, the Deposit shall immediately be refunded to Buyer, this Agreement shall be of no further force or effect, and the parties shall have no further rights, duties, liabilities or obligations, at law or in equity, to each other of any kind or nature arising out of or relating to this Agreement, except for those obligations which are specified under this Agreement to survive termination.

b. Development Approvals Contingency. Buyer shall have an initial period of one (1) year following the Effective Date, as may be extended (the "Approvals Period"), to acquire all approvals and permits for the project including, but not limited to, grading, foundation and building permits, that Buyer deems necessary or desirable for the development of the Property as set forth on the Master Plan (each hereinafter an "Approval," and collectively the "Approvals"). If Buyer determines one or more Approvals related to the development of the Property under the Master Plan are required or desired, but have not yet been obtained during the initial Approvals Period, then so long as Buyer diligently commences to obtain such Approval(s) and thereafter prosecutes such Approval(s) in a commercially reasonable manner, the last day of the Approvals Period may be extended by two (2) ninety (90) day extensions of the Approvals Period, if Seller, in its sole discretion, grants either or both extensions. To exercise each extension option, prior to the expiration of the Approvals Period (as it may be extended), Buyer shall (i) notify Seller and the Title Company of such exercise, and (ii) increase the Deposit by an additional Ten Thousand Dollars (\$10,000.00) deposit credited for each Extension Option exercised. Upon exercising any of the extensions provided above, Buyer shall deliver to Seller upon Seller's reasonable request, periodic updates regarding Buyer's acquisition of the remaining requested Approvals. Seller's obligation to grant any further extensions above is conditioned upon a showing that Buyer has pursued the Approvals in a commercially reasonable manner.

If at any time prior to Closing, Buyer determines that the desired Approvals have not been, or will not be, issued, then Buyer may terminate this Agreement by written notice to Seller. If this Agreement is terminated by Buyer pursuant to this Section 6.b at any time prior to Closing, but after the end of the Study Period, then the Deposit shall be refunded to the Buyer, this Agreement shall be of no further force or effect, and the parties shall have no further rights, duties, liability or obligations, at law or in equity, to each other of any

kind or nature arising out of or relating to this Agreement, except for those obligations which are specified under this Agreement to survive termination.

7. Title and Survey. Title to the Property shall be good and marketable, free and clear of all liens, encumbrances and encroachments, and free of all violation notices from any governmental authority having jurisdiction over the Property, except for the Permitted Exceptions, as hereinafter defined. For purposes hereof, "Permitted Exceptions" shall mean (a) the exception matters disclosed on Seller's title policy, which is attached hereto as Schedule 6 excluding any exception for survey matters; and (b) any other matters which are not objected to by Buyer during the Study Period except for those matters hereinafter described to which Buyer may object following the Study Period. Title to the Property shall not be deemed good and marketable unless a national title insurance company, acceptable to Buyer, agrees to insure fee simple title to the Property and issue to Buyer an owner's title insurance policy, at standard rates, subject only to the Permitted Exceptions. Funds payable by Buyer at Closing may be used to pay off any existing liens, encumbrances or violation penalties, including accrued interest thereon.

During the Study Period Buyer may cause a title company to conduct a title examination of the Property and a surveyor to prepare an ALTA Survey of the Property. If Buyer finds title not to be as set forth in Schedule 6, Buyer shall, no later than the last day of the Study Period, notify Seller in writing specifying the differences or survey objections. Buyer shall have the right to additionally object to any matters first appearing of record after the expiration of the Study Period, or during the gap from the last update of title to the expiration of the Study Period, unless such matters were caused by Buyer.

If, as provided above, Buyer has given Seller timely written notice of any such differences or survey objections, Seller shall use reasonable efforts to cause such objections to be resolved by the date of Closing. Seller shall bring suit, if necessary, to cure any other objection or to buy-out or settle any other claim or lien against the Property so long as such actions do not render such matters uncollectible under Seller's title insurance. Notwithstanding the foregoing, Seller (which shall not be deemed a limitation on Seller's title insurer) shall not be required to expend more than One Hundred Thousand Dollars (\$100,000.00) in the aggregate, including reasonable attorney's fees and expenses, to remove any title or survey objections. At either party's option, the date of Closing may be extended for a period not to exceed ninety (90) days for purposes of eliminating any title or survey objections. In the event that Seller does not eliminate any title or survey objections as of the date of Closing as the same may be extended under the preceding sentence, Buyer shall have the option of either (i) proceeding with Closing and accepting the title "as is", without reduction in the Purchase Price and without claim against Seller therefor, or (ii) terminating this Agreement in which event the Escrow Agent shall return the Deposit and all interest earned thereon to Buyer and the parties shall have no further rights, duties, liabilities or obligations, at law or in equity to each other of any kind or nature arising out of or relating to this Agreement, except for those obligations which are specified under this Agreement to survive termination.

8. Delivery of Related Documents. Each party shall execute and acknowledge, seal and deliver, after the date hereof and at Closing, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

9. Adjustments. At Closing, all rents, real estate taxes, utilities, charges for sewer and water, if any, and all other public or governmental charges or public or private assessments against the Property shall be adjusted and apportioned between the parties as of 11:59 p.m. on the date of Closing and shall thereafter be assumed and paid by Buyer, whether or not assessments have been levied as of the date of Closing. All assessments imposed against the Property by any governmental agency or public utility for improvements resulting from work commenced or development activities undertaken on or before Closing shall be paid in full by Seller at Closing. All assessments for improvements to or for the benefit of the Property for work commenced after Settlement shall be paid by Buyer unless such work is required by or results from development activities undertaken on or before Closing by Seller in which case the assessment shall be paid by Seller. If at the time for the delivery of the deed, the Property is affected by an assessment that is or may become payable in annual installments, then for the purposes of this Agreement, all of the unpaid installments of any such assessment shall be deemed to be due and payable and shall be paid and discharged by Seller.

The cost of all documentary stamps, recordation taxes and transfer taxes with respect to this transaction shall be shared and paid equally by Seller and Buyer;

10. Representations and Warranties by Seller. To induce Buyer to enter into this Agreement and to purchase the Property, Seller hereby represents and warrants to, and covenants and agrees with Buyer the following, with the understanding and intention that Buyer is relying upon the accuracy of such representations and warranties, and the agreement of Seller to comply with and perform such covenants and agreements. These representations, warranties, covenants and agreements shall be deemed to be made by Seller to Buyer as of the Effective Date and as of the Closing Date and thereafter (it being understood that such representations, warranties, covenants and agreements shall not be merged into the documents to be executed on the Closing Date). This Agreement is contingent upon and subject to the truth and accuracy of such representations and warranties, and the full and complete satisfaction of such covenants and agreements, and if such representations and warranties are not true and accurate or if any such covenants and agreements are not satisfied, Buyer shall have the option of terminating this Agreement by written notice to Seller and receiving a return of its Deposit. The following are the representations and warranties:

a. Seller is a municipal corporation which was duly formed and organized and is in good standing under the laws of the State of North Carolina. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, Seller has full power and authority to enter into and perform the terms and conditions of this Agreement, and the person executing this Agreement for

Seller is fully and duly empowered and authorized to so act; to the best of Seller's knowledge, entering into this Agreement does not, and the consummation of the acts contemplated by this Agreement shall not, violate any agreements, documents or instruments to which Seller is a party or by which it is bound, or any law, governmental regulation, order or decree to which Seller is subject;

b. To the best of Seller's knowledge, there are no laws, statutes, ordinances, building or use restrictions or zoning regulations now applicable to the Property which prohibit any of the uses presently being made thereof;

c. There are no pending or threatened condemnation or similar proceedings or assessments affecting the Property or any part thereof, nor to the best knowledge and belief of Seller, are any such assessments or proceedings contemplated by any governmental authority;

d. There are no actions, suits, proceedings or claims affecting any part of the Property, or affecting Seller with respect to the ownership, occupancy, use or operation of any part of the Property, pending or threatened in or before any court, agency, commission, or board;

e. Seller is not in breach of any law or regulation, or under any order of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, wherever located, with respect to the Property or the Seller's present use and operation of the Property;

f. Seller has not received any summons, citation, directive, notice, complaint, letter or other communication, written or oral, from the United States Environmental Protection Agency or other governmental authority concerning any alleged violation of any environmental law or rule or regulation at the Property and, to the best of Seller's knowledge, the Property is not currently under investigation for any such violation;

g. There is no actual, pending or threatened action, suit, claim, litigation, or proceeding by any entity, individual or governmental agency affecting Seller or the Property which would in any way constitute a lien, claim or obligation of any kind against the Property, and to the best of Seller's knowledge, there is no such action, suit, claim, litigation or proceeding contemplated;

h. There are no contracts, leases, licenses, or other agreements affecting the Property;

i. From the Effective Date until the Closing, Seller shall (i) maintain the Property in, or, if necessary, restore the Property to, its present condition, subject to reasonable wear and tear, damage and condemnation, and, (ii) continue to maintain the Property in a good, businesslike manner;

j. Seller has delivered to Buyer complete, true, and correct copies of all insurance policies; Seller shall continue all such insurance policies in full force and effect through the Closing Date, and Seller shall neither cancel nor amend any of the same without Buyer's prior written consent;

k. Seller has not received, and has no knowledge of, any written notices or written requests from any mortgagee, insurance company, or Board of Fire underwriters, or any organization exercising functions similar thereto, requesting the performance of any work or alterations in respect to the Property, and has not received and has no knowledge of any such non-written notices or requests;

l. From the Effective Date through the Closing Date, Seller shall not enter into any new agreements affecting the Property ("Property Agreements") without the prior written consent of Buyer. The copies of the Property Agreements previously delivered to Buyer, if any, are true, accurate, and complete, and there is no material, uncured breach or default by Seller or by any other party under the Property Agreements; prior to the Closing Date, Seller shall comply with each and every undertaking, covenant, and obligation under the Property Agreements and the same shall not be modified, amended, terminated, renewed, or otherwise altered without the prior written consent of Buyer, and Seller shall not modify or alter any repair or maintenance programs or policies now in effect with respect to the Property;

m. Seller owns the entire fee simple title to the Property (legal and equitable) and all persons who have any ownership interest or claim whatsoever in and to the Property (except trustees or mortgagees under existing deeds of trusts or mortgages, if any) have also signed this Agreement, thereby ratifying same; on the Closing Date, Seller shall have good and marketable title in fee simple to the Property, free and clear of all restrictions, liens, leases, encumbrances, rights-of-way, easements, encroachments, exceptions, and other matters affecting title, except for the Permitted Exceptions;

n. No person, firm, or entity, other than Buyer, has any rights in or right to acquire the Property or any part thereof, and as long as this Agreement remains in force, Seller will not, without Buyer's prior written consent, lease, transfer, mortgage, pledge, or convey its interest in the Property or any portion thereof nor any right therein, nor shall Seller enter into, or negotiate for the purpose of entering into, any agreement or amendment to agreement granting to any person or entity any right with respect to the Property or any part thereof;

o. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers or otherwise;

p. There will be no outstanding mechanic's and materialmen's liens or claims of creditors against the Property on the Closing Date that will not be removed by Seller on the Closing Date;

q. To the best of Seller's knowledge, no petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending or threatened against or contemplated by Seller; and

r. The Property is contiguous with a public road along all of its common boundary with such roadway, so that there are no strips or gores lying between such roadway and the Property. The Property has access to a publicly dedicated and accepted thoroughfare, and all access points from the Property to any public rights-of-way are either through duly issued curb (and median, if applicable) cut permits or through private easements running with title to the Property. There is no pending or threatened governmental proceeding which would impair or curtail such access.

The above representations, and warranties shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, whether by sale, foreclosure, deed in lieu of foreclosure or otherwise.

If Buyer discovers any breach of the foregoing representations and warranties prior to closing, it shall afford Seller a period of one hundred twenty (180) days to cure such breach. Any time utilized by Seller to cure any breach shall be added to the one hundred eighty (180) day Study Period, as defined in Section 6.a. of this Agreement, if applicable. In the event Seller is unable to cure such breach within that time period, Buyer shall be entitled to terminate this Agreement in which event the Escrow Agent shall return the Deposit to Buyer.

11. Representations and Warranties by Buyer. To induce Seller to enter into this Agreement and to sell the Property, Buyer hereby represents and warrants to, and covenants and agrees with Seller the following, with the understanding and intention that Seller is relying upon the accuracy of such representations and warranties, and the agreement of Buyer to comply with and perform such covenants and agreements. These representations, warranties, covenants and agreements shall be deemed to be made by Buyer to Seller as of the Effective Date and as of the Closing Date and thereafter (it being understood that such representations, warranties, covenants and agreements shall not be merged into the documents to be executed on the Closing Date). This Agreement is contingent upon and subject to the truth and accuracy of such representations and warranties, and the full and complete satisfaction of such covenants and agreements, and if such representations and warranties are not true and accurate or if such covenants and agreements are not satisfied, Seller shall have the option of terminating this Agreement by written notice to Buyer and shall be allowed to retain the Deposit. The following are the representations and warranties:

a. Buyer is Florida limited liability company which was validly formed and organized and is in good standing under the laws of the State of Florida. Buyer has filed with the Secretary of State of North Carolina appropriate registrations and is

authorized to do business in this State. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms; Buyer has full power and authority to enter into and perform the terms and conditions of this Agreement; and the person executing this Agreement for Buyer is fully and duly empowered and authorized to so act;

b. There are no pending or, to the knowledge of Buyer, threatened legal actions, suits or other legal or administrative proceedings pending or threatened against Buyer that, if determined adversely to Buyer, would materially adversely affect Buyer's ability to perform its obligations under this Agreement or that would enjoin or prevent the consummation of the Closing; and

c. To the best of Buyer's knowledge, no petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending or threatened against or contemplated by Buyer.

The above representations and warranties shall survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, whether by sale, foreclosure, deed in lieu of foreclosure or otherwise.

If Seller discovers any breach of the foregoing representations and warranties prior to Closing, it shall afford Buyer a period of one hundred twenty (120) days to cure such breach. In the event that Buyer is unable to cure such breach within that time period, Seller shall be entitled, as its sole and only remedy, to receive and retain the Deposit and have the title to the Property conveyed to the City.

12. Other Undertakings of the Parties.

- a. The Seller is responsible for all public investments specified in EXHIBIT C of this agreement.
- b. The Seller shall provide access to hotel parking for hotel patrons as specified in EXHIBIT D of this agreement.

13. Condemnation. If after the date hereof and prior to Closing any part of the Property is taken or threatened to be taken by eminent domain or condemnation, Seller shall notify Buyer thereof, and Buyer may elect either (a) to terminate this Agreement, in which event the Deposit shall be refunded and the Agreement shall be of no further force or effect and the parties shall have no further rights, duties, liabilities or obligations, at law or in equity to each other of any kind or nature arising out of or relating to this Agreement, except for those obligations which are specified under this Agreement to survive Closing or termination; or (b) to consummate Closing as herein provided in which event all

condemnation awards or payments shall be paid or assigned by Seller to Buyer at Closing.

14. Risk of Loss. The Property shall be held at the risk of Seller until Closing. Seller shall immediately have all insurance policies on the Property endorsed to protect all parties hereto as their interests may appear and shall continue the insurance in full force during the term of this Agreement.

15. Indemnification. The Buyer hereby agrees to indemnify, protect and save the Seller and its officers, Council members and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the development of the Property or the construction of the hotel or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the control of the Buyer and not the Seller. The indemnification arising under this Article shall survive the Agreement's termination.

To secure this indemnification commitment, the Buyer, at no cost to the Seller, shall furnish the Seller with a certificate of insurance, in form and context acceptable to the Seller, which names the Seller as an additional insured party. The insurance coverage provided by the Buyer shall have coverage limits of no less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

The Seller hereby agrees to indemnify, protect and save the Buyer and its officers and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the development of the Property or the construction of the hotel or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the control of the Seller and not the Buyer. The indemnification arising under this Article shall survive the Agreement's termination.

16. Possession. At Closing, Seller shall deliver exclusive possession of the Property to Buyer, free and clear of any tenancies, occupants or parties in possession.

17. Termination. If prior to closing Buyer fails to perform any of its obligations under this Agreement in any material respect and if such failure continues unremedied for more than thirty (30) days following receipt by Buyer of written notice from Seller specifying the nature of such failure, then Seller may, as its sole and exclusive remedy, terminate this Agreement by written notice to Buyer, and thereupon Escrow Agent shall pay to Seller, the Deposit as sole and exclusive remedy and as liquidated damages and not a penalty, such amount being recognized by Seller as being Seller's unascertainable

damages that result from Seller's loss, cost and expense arising out of the transaction contemplated by this Agreement. The Deposit shall be liquidated damages for a default by Buyer prior to closing because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default, and the retention of the Deposit under those circumstances will not constitute a penalty or a forfeiture. In such event, this Agreement shall be without additional recourse to Buyer and Seller and no additional damages, costs or expenses shall be sought by Seller in connection herewith. Seller expressly waives any rights to seek or obtain specific performance of this Agreement or to recover any losses suffered or incurred by Seller due to any breach or default by Buyer in excess of the Deposit. Any attendance or appearance at Closing by either party shall not nullify or void this provision for payment of liquidated damages as Seller's sole and only remedy. Upon such payment of the liquidated damages, this Agreement shall be of no further force or effect, and neither party shall have any further rights, duties, obligations, or liabilities, at law or in equity arising out of or relating to this Agreement.

If Seller shall fail to proceed to Closing under this Agreement, or if prior to closing Seller fails to perform any of its other obligations under this Agreement and if such other failure by Seller continues unremedied for more than thirty (30) days following receipt by Seller of written notice from Buyer specifying the nature of such failure, then Buyer may as its sole and exclusive remedy, terminate this Agreement by written notice to Seller, and thereupon Escrow Agent shall pay to Buyer the Deposit as liquidated damages and not a penalty, such amount being recognized by Buyer as being Buyer's unascertainable damages that result from Buyer's loss, cost and expense arising out of the transaction contemplated by this Agreement. The Deposit shall be liquidated damages for a default by Seller prior to closing because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default, and the retention of the Deposit under those circumstances will not constitute a penalty or a forfeiture. In such event, this Agreement shall be without additional recourse to Seller and Buyer and no additional damages, costs or expenses shall be sought by Buyer in connection herewith. Buyer expressly waives any rights to seek or obtain specific performance of this Agreement or to recover any losses suffered or incurred by Buyer due to any breach or default by Seller in excess of the Deposit. Any attendance or appearance at Closing by either party shall not nullify or void this provision for payment of liquidated damages as Buyer's sole and only remedy. Upon such payment of the liquidated damages, this Agreement shall be of no further force or effect, and neither party shall have any further rights, duties, obligations, or liabilities, at law or in equity arising out of or relating to this Agreement.

18. Notices. Any notice to be given to any party hereto in connection with this Agreement shall be in writing and shall be deemed given if hand delivered with signed receipt, sent by electronic mail, sent by facsimile to the number provided hereunder (with transmittal confirmation), or sent by recognized overnight express delivery service, postage prepaid, and addressed as follows:

If to Seller: City of Greenville, N.C.

Fax: 252-329-4435

If to Buyer: Greenville Ventures, LLC
107 Stokley Dr.
Wilmington, NC 28403
JSANDLIN@SRPNC.COM
Fax: _____

Notices shall be deemed given upon receipt thereof by both the relevant party and persons to whom copies are to be provided for such party, provided that such actual receipt be prior to 3:00 PM on a business day (days other than Saturdays, Sundays, and State or Federal legal holidays). If such notices are not received by 3:00 PM on a business day as provided above, such notices shall be deemed received on the next subsequent business day. Upon not less than ten (10) days prior notice to the other parties listed above, the parties shall be entitled to change the name, address and/or facsimile number to which notices must be sent for their behalf.

19. Brokers. No real estate commissions or brokerage fees shall be paid by Buyer or Seller arising out of this Agreement and the consummation of the transactions contemplated hereby. Each of Buyer and Seller hereby agree to defend, indemnify and hold harmless the other Party, its partners, agents, representatives and affiliates from and against any cost, damage, liability or expense of any kind (including reasonable attorney's fees and litigation costs and expenses) arising out of claims of real estate agents, brokers or finders for a fee, commission or the like. The foregoing indemnification shall survive Closing or any termination of this Agreement.

20. FIRPTA. The Foreign Investment in Property Tax Act (FIRPTA), IRC Section 1445, requires that every purchaser of U.S. property must, unless an exemption applies, deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price. The primary exemptions which might be applicable are: (a) Seller provides Buyer with an affidavit, under penalty of perjury, that Seller is not a "foreign person," as defined in FIRPTA, or (b) Seller provides Buyer with a "qualifying statement," as defined in FIRPTA, issued by the Internal Revenue Service. Seller and Buyer agree to execute and deliver as appropriate, any instrument, affidavit and statement, and to perform any acts reasonably necessary to carry out the provisions of FIRPTA and regulations promulgated thereunder.

21. Escrow Agent. Seller and Buyer agree to defend, indemnify and hold Escrow Agent harmless from and against any and all liability, loss, damage, cause of action, claim, cost and expense (including court costs and attorney's fees) sustained by Escrow Agent as a result of any activities of Escrow Agent except for acts of gross negligence or willful misconduct. Escrow Agent shall not be liable for any act or omission undertaken in good faith.

22. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. Assignment. Nothing herein is intended to confer upon any person other than the parties and their respective legal representatives, successors and permitted assigns any rights or remedies under or by reason of this Agreement. Buyer may assign this Agreement to a Subsidiary which is majority owned by the Buyer or an Affiliate of Buyer, without consent of Seller, subject to providing Seller ten (10) days' notice of assignment, provided that Assignee agrees to be fully obligated under all terms of this Agreement and Buyer will guarantee the performance by the Subsidiary or Affiliate of the obligations due under this Agreement. Any such assignment shall not release the Buyer named herein from any liability for the performance of Buyer's obligations under this Agreement. The term "Subsidiary" means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, of which: (i) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person (through ownership of securities, by contract or otherwise); or (ii) such Person or any Subsidiary of such Person is a general partner of any general partnership or a manager of any limited liability company. The term "Affiliate" shall mean, with respect to any specified Person, another person that controls or is under common control with the specified Person. Buyer shall not assign any interest in or obligation under this Agreement to any party other than a Subsidiary or Affiliate, without the prior express written consent of Seller. Buyer may not assign this Agreement to any other entity without the consent of the Seller.

24. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

25. Exhibits and Schedules. Each writing or plat referred to herein as being attached hereto as an exhibit or schedule or otherwise designated herein as an exhibit or schedule is hereby made a part of this Agreement.

26. Applicable Law. This Agreement shall be given effect and construed by application of the laws of the State of North Carolina, and in particular the provisions of Section 158-7.1 of the North Carolina General Statutes, without regard to principles of conflicts of laws, and any action or proceeding arising hereunder shall be brought in the courts of North Carolina; provided, that if any such action or proceeding arises under the Constitution laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties hereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Eastern District of North Carolina. Each of the parties consent to jurisdiction and venue in the state and federal courts of North Carolina.

27. Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided therein for and only for convenience of reference, and shall not be considered in construing their contents.

28. Survival. Each and every warranty, representation, covenant and agreement of Seller contained in this Agreement shall be deemed to have been made as of the Effective Date and as of the Closing Date and shall survive the Closing and shall not be merged into the deed or any other document executed and delivered at the Closing, but shall expressly survive and be binding thereafter on Seller. No inspections or examinations of the Property, or the books, records or information relative thereto by Buyer shall diminish or otherwise affect Seller's representations, warranties, covenants and agreements relative thereto and Buyer may continue to rely thereon.

29. Cumulative Rights. All rights, powers and privileges referred to under this Agreement upon the parties shall be cumulative and shall not be restrictive of those given by law except to the extent expressly provided to the contrary in this Agreement.

30. Effective Date. The term "Effective Date" as used in this Agreement shall mean the date that a fully executed original of this Agreement is delivered to and received by Buyer and the Escrow Agent.

31. No Waiver by Conduct. The failure of either party to exercise any power or given such party under this Agreement or to insist upon strict compliance by the other party with its obligations under this Agreement shall not, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of such party's rights to demand exact compliance with the terms hereof.

32. Pronouns. Pronouns, wherever used herein, and of whatever gender, shall include natural persons, and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate.

33. Holidays. Whenever the last day for the exercise of any right or discharge of any obligation under this Agreement is a Saturday, Sunday or statutory holiday, the party having such right or obligations shall have until 5:00 p.m. on the next day other than

a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

34. Attorneys' Fees. In the event of any litigation between Buyer and Seller relating to or arising out of this Agreement, the party prevailing in such litigation shall be entitled to recover from the non-prevailing party all reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees and expert witness fees, suffered or incurred by the prevailing party with respect to such litigation.

35. Additional Obligations of Seller.

a. Discovery of Additional Facts. Seller and Buyer shall promptly advise the other party in writing of any facts of which Seller or Buyer becomes aware indicating the inaccuracy of any of its representations or warranties contained in this Agreement and shall promptly give to the other party copies of any written notices which it receives relating to the Property.

b. No Waste. Seller shall keep the Property in its present physical condition and shall not excavate or commit any waste upon the Property.

c. Governmental Applications. Seller shall not file any plans, plats or any other documents or materials with any governmental authority that are not in compliance with the Agreement unless Seller has obtained Buyer's prior written approval of such plans, plats and/or other documents and materials in each instance.

36. Interpretation and Additional Definitions. Wherever in this Agreement provision is made for the doing of any act or performing any obligation by either party, such acts or performance shall be done by such party at its own cost and expense unless a contrary intent is expressed. Any pronoun shall be read in the singular or plural number and in such gender as the context may require. The words "including" or "includes" means "including, but not limited to". The word "any" means "any and all". The word "may" means "may, at its option, but shall not be obligated to". The phrase "laws and regulations" means any laws, ordinances, statutes, rules, regulations or other lawful requirements of any governmental authority. The phrase "governmental authority" means any federal, state or local government or quasi-governmental entity including any agency, department, division or bureau. The terms "person or entity" means and includes natural persons, firms, associations, corporations, partnership, ventures, trusts or any other type of organization. The use of the phrase "without prejudice" in any provision of this Agreement means that the exercise of any express rights or remedies shall not preclude or diminish such party's ability to exercise any other rights or remedies, at law, in equity or under this Agreement.

37. Acceptance; Counterparts. If Seller does not accept and execute this Agreement and deliver a fully executed copy of this Agreement to Buyer and the Escrow Agent on or before close of business on _____, 2020, then the offer of Buyer set forth in this Agreement shall be deemed automatically withdrawn and of no

further force or effect. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

38. Entire Agreement and Modifications. This Agreement constitutes the final and entire agreement between the parties hereto and they shall not be bound by any terms, covenants, conditions, representations or warranties not expressly contained herein. This Agreement may not be amended except by written instrument executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first written above.

WITNESS:

SELLER:

Valerie Shunveggar - City Clerk



WITNESS:

CITY OF GREENVILLE, N.C.

By: [Signature] (SEAL)

Name: P.J. Connelly

Title: Mayor

Date: 08/21/2020

BUYER:

GREENVILLE VENTURES, LLC

Lisa Morris

By: [Signature] (SEAL)

John Sandlin, Manager

Date: 8/31/20

JOINDER OF ESCROW AGENT

The undersigned joins in the execution of the foregoing Agreement for the sole purpose of agreeing to hold and apply the Deposit subject to and in accordance with the terms of the foregoing Agreement.

ESCROW AGENT:

NEXSEN PRUET PLLC

By: Ernest C. Pearson (SEAL)

Name: Ernest C. Pearson

Title: Member

Date: 9/10/20

EXHIBITS AND SCHEDULES

1. EXHIBIT A LEGAL DESCRIPTION OF PROPERTY
2. EXHIBIT B ADDITIONAL PURCHASE CONDITIONS FOR THE PROPERTY
3. EXHIBIT C PUBLIC INVESTMENT
4. EXHIBIT D HOTEL PARKING

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A. Lot One: Pitt County Tax Parcel Numbers 14486 (portion) and 51695:

Lying and being in the City of Greenville, Pitt County, North Carolina on the east side of Evans Street between Fourth and Fifth Streets, being all of Lot 1 and Lot 2 as shown on a map entitled "Boundary Survey for Phoenix Redevelopment of Greenville, LLC, Property of Uptown Properties, LLC" dated September 10, 2007, prepared by Rivers and Associates, Inc., and recorded in Map Book 68, at Page 199 in the office of the Register of Deeds of Pitt County, to which map reference is hereby made for a more complete and accurate description.

B. Lot Two: Portion of Pitt County Tax Parcel Number 14486:

All of that property described by deeds recorded in Deed Book U-41, Page 364 and Deed Book V-41, Page 617 and being more particularly described as follows:

At the southwest corner of fourth and Cotanche Streets, in the City of Greenville, Pitt County, North Carolina, and BEGINNING at the point of intersection of the southern property line of Fourth Street with the western property line of Cotanche Street, running thence South 11-51-30 West and along the western property line of Cotanche Street 210.60 feet to an iron stake, the northeast corner of an alley owned by the J.J. White Heirs property 130.06 feet, more or less, to a stake, a corner with Vina Mae Garris' Heirs; thence North 11-18 East and along the eastern line of properties owned by the Garris Heirs, Milo Smith, and the B.G. Abeyounis Heirs, 130.79 feet to a stake, the southeast corner of the W.E. Hooker Heirs property; thence North 11-13 East along the eastern line of the W.E. Hooker Heirs property 82.22 feet, more or less, to a stake in the southern property line of Fourth Street; thence South 78-25-00 East and along the southern property line of Fourth Street 132.19 feet to a stake, the point of BEGINNING.

LESS AND EXCEPT from the foregoing the property previously conveyed to the City of Greenville and being all of Parcel No. 1 in the deed recorded in Boot T-43, Page 473 and being more particularly described as follows:

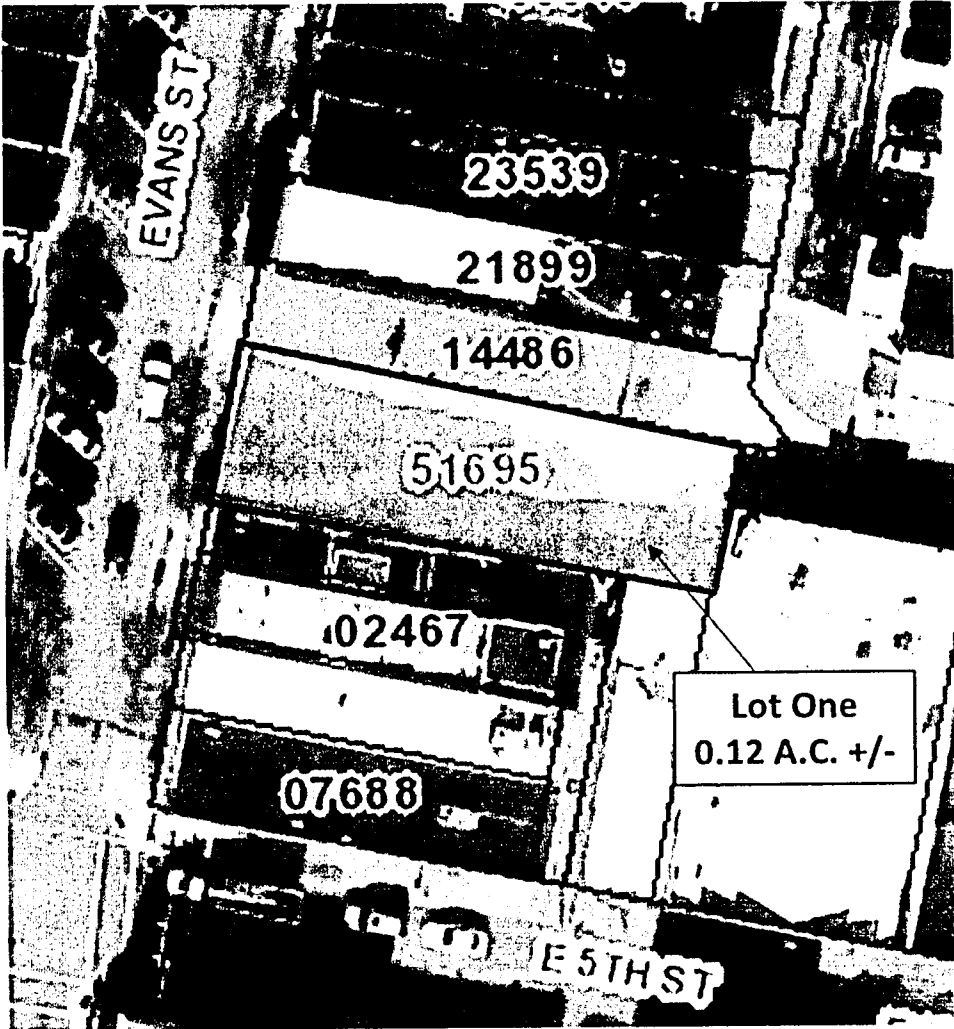
At the southwest intersection of Fourth and Cotanche Streets and BEGINNING at the point of intersection of a line parallel with the southern edge of the sidewalk on the south side of Fourth Street and 2 feet southerly therefrom, with a line parallel with the western edge of the sidewalk on the west side of Cotanche Street and 2 feet westerly therefrom, and from said beginning point running south 11-51-30 west 210.6 feet to a railroad spike; thence north 78-37 west 115.06 feet to a railroad spike; thence north 33-39-30 west 21.23 feet to a point; thence north 11-18 east and along a retaining

wall 196.06 feet to a point 2 feet south of the southern edge of the sidewalk on the south side of Fourth Street; thence south 78-25 east and parallel with the southern edge of the sidewalk on the southside of Fourth Street and 2 feet therefrom, 132.07 feet to the point of beginning and being Lot 1, Block L of the Greenville Central Business District property, project NCR-66 dated June 23, 1975 and containing 27,523 square feet, more or less, by actual survey.

Tract One and Tract Two described above are hereby conveyed subject to all easements and rights of others in and to the use of the alleyway shown on maps recorded in Map Book 68, Page 199, Map Book 77, Page 172 and Map Book 23, Page 50-50A, Pitt County Registry.

PARCEL MAP

A. Lot One: Pitt County Tax Parcel 51695:



B. Lot Two: Pitt County Tax Parcel 14486:

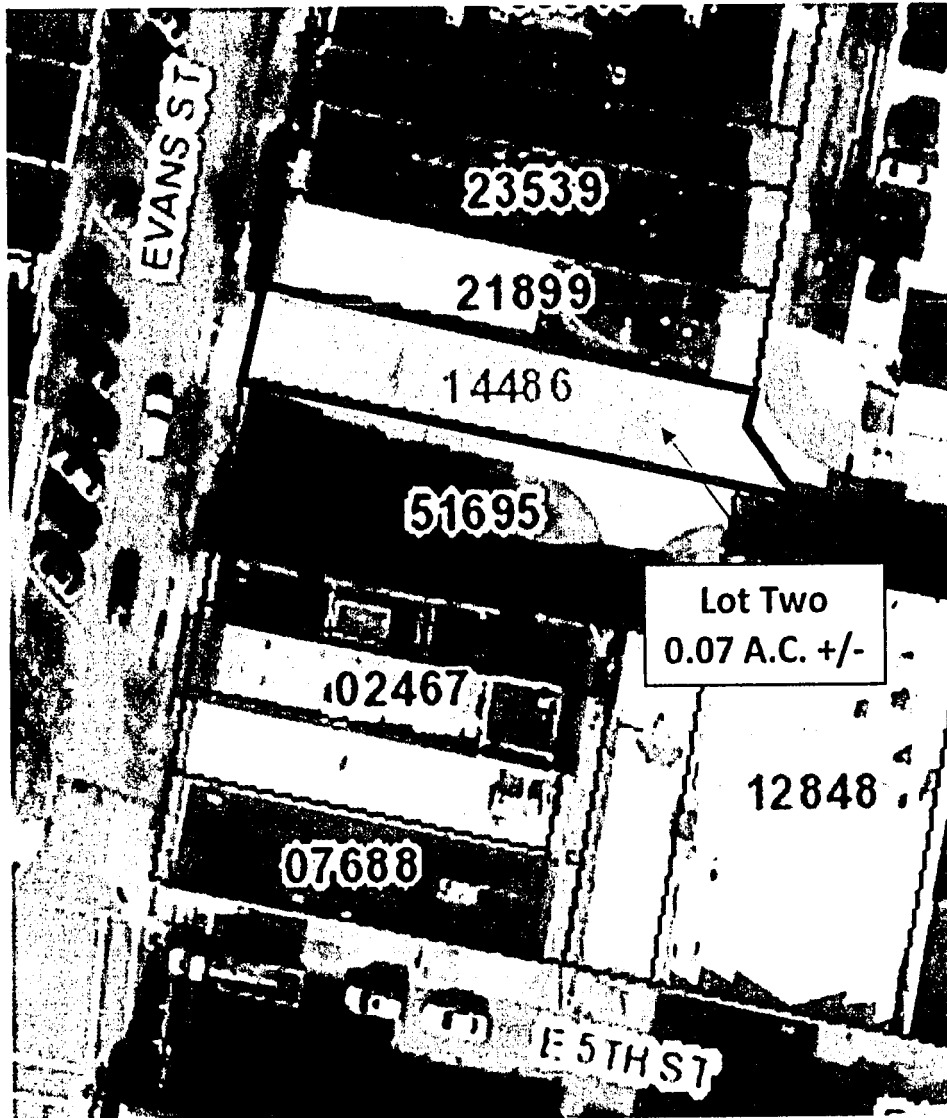


EXHIBIT B

ADDITIONAL PURCHASE TERMS

- Buyer shall apply for a building permit for the project within twelve (12) months of the final execution of the agreement. In the event a building permit for the project is not applied for within the twelve (12) month period, the Seller, in its sole discretion, may refund any payments made by Buyer less the amount of the deposit and the ownership of the property will revert to the Seller.
- If at any time prior to closing the City denies the building permit at no fault of the Buyer, all Deposits shall be refunded to the Buyer.
- Buyer shall develop all properties in conformity with the Agreement and comply with governmental zoning or other regulatory requirements. The following terms, conditions and processes shall apply to the development of the Property:
 - Buyer shall provide the City with both preliminary and final plans for its review for consistency with the Agreement prior to the building permit being applied.
 - The City shall have the right to approve the architectural design and all exterior building materials and finishes for the project's development and site improvements to be constructed on the property which are consistent with surrounding properties and meet the City's architectural guidelines. Approval shall not be unreasonably denied, withheld or conditioned by the City.
 - The architectural designs, site improvements and site plan submitted for construction shall be consistent in all aspects with the designs agreed to and approved by the City and considered as an element of the Agreement unless otherwise approved by the Seller.
 - During construction, Buyer will allow the Seller access onto the Property so that the Seller may conduct inspections of the work for consistency with the Agreement and consistency with normal City of Greenville building code inspections.
- Buyer shall complete the project within twenty (20) months of the construction of the hotel slab. The completion date may be extended to a date beyond twenty (20) months only upon mutual agreement of the Seller and Buyer (the "Extended Date"). The Seller shall not unreasonably deny an extension of the completion date requested by the Buyer. Rain days prior to the structure being dried in and force majeure events will be credited against the twenty (20) month period and any subsequent extended period. The project shall be deemed complete upon issuance of both a Certificate of Occupancy and a Statement of Acceptance and Completion to Buyer by the Seller.

- If the project is not completed within twenty (20) months of the construction of the hotel slab, or the project is not completed by the Extended Date, then beginning one hundred twenty (120) days following the end of the twenty (20) month period, or one hundred twenty (120) days following the Extended Date, Buyer shall pay the Seller five hundred dollars (\$500) per day, as liquidated damages, until the project is completed. The City shall not issue the Certificate of Occupancy to Buyer until all assessed liquidated damages have been paid by Buyer to the Seller.
- The following conditions and restrictions shall apply to the hotel component:
 - The hotel brand, design, and quality to be located on the property shall be reviewed by the Seller and Buyer, prior to execution of this Agreement.
 - The hotel shall have a minimum of ninety (90) rooms with a roof top bar and lounge.
 - The hotel shall be a hospitality industry rated minimum of three (3) stars.
 - The hotel development company selected to manage the property must have documented references of successful operations in other cities.
 - The Buyer shall provide to the Seller references of prior developments completed for the purpose of contact and verification as to the quality of the Buyers work, prior to the execution of the agreement.

The first four of these conditions and restrictions are requirements which must be maintained by the Hotel Developer in order to continue to receive Capital Investment Credits pursuant to Exhibit C.

- Buyer shall conform and install streetscape improvements with materials as specified in the adopted streetscape master plan for the areas that are located within the public street rights-of-way abutting the property.
- Buyer shall include an art component in the project, at the Buyers sole discretion.
- The City shall cooperate with the Buyer's general contractor as to any needed street closures related to the hotel development during the construction period.
- The terms of this Exhibit B shall survive and remain in force beyond closing.

EXHIBIT C

PUBLIC INVESTMENT

The City shall be responsible for providing the following public investments:

- Subject to a public hearing and the majority vote of the City Council, after consideration of all comments at the public hearing, the City shall award an annual Capital Investment Grant (the "Grant") to the developer of the hotel (the "Hotel Developer") equal to eighty percent (80%) of the annual City property taxes paid by the Hotel Developer on the hotel property for a period of twelve fiscal years, contingent upon the following requirements:
 - The hotel shall be complete with the issuance of a Certificate of Occupancy and issuance of a Statement of Acceptance and Completion to the Hotel Developer by the City.
 - The hotel shall be developed in compliance with the additional purchase terms applicable to the hotel development as set forth in Exhibit B of this Agreement.
 - The Hotel Developer's investment in the hotel shall be greater than or equal to twelve million dollars (\$12,000,000).
 - The Hotel Developer shall submit application for building permit for the project within twelve (12) months of the Effective Date of the Agreement.

At any time during the twelve (12) year grant period the hotel development does not comply with any of the additional purchase terms related solely to the first four listed conditions and restrictions which shall apply to the hotel component as set forth in Exhibit B of this agreement, then the Capital Investment Grant shall be terminated, and no further Capital Investment Grants will be paid to the Hotel Developer.

Hotel Developer must submit proof of payment of annual City property taxes before remittance of the annual grant to the Buyer. Each annual Grant shall be paid by the City to the Hotel Developer within thirty (30) days following the provision of such proof of payment.

- The City shall waive the payment by the Buyer to the City of the Building Inspection Permitting Fees that are directly related to the construction of the hotel and that include, but are not limited to, building permit fees, electrical permit fees, mechanical permit fees, and plumbing permit fees. The City shall submit statements to the Buyer detailing the City Permitting Fees directly related to the construction of the hotel and verification that payment by the Buyer of the City Permitting Fees have been waived in compliance with the Agreement.

If for any reason the hotel development is not completed, or if during the twelve (12) year grant period the hotel development does not comply with any of the additional terms related solely to the first four (4) listed conditions and restrictions which apply to the hotel development as set forth in Exhibit B of this Agreement the Buyer shall submit payment to the City for the full value of the waived fees within thirty (30) days of a demand for such from the City. The hotel shall be complete with the issuance of a Certificate of Occupancy and issuance of a Statement of Acceptance and Completion to the Hotel Developer by the Seller.

- The City shall utilize the net proceeds received by the City from the Buyer for the conveyance of the Property to fund the following:
 - Installation of a covered walkway from the hotel to the parking garage.
 - Relocation of public utilities related to the project including water, sewer, electric and gas.

The City and the Buyer shall work together to agree as to the exact allocation of the net proceeds to fund the above listed purposes, which will be recommended to the City Council for its approval.

If there are any net proceeds remaining from the conveyance after utilizing the proceeds for the above listed purposes, the remaining net proceeds shall be used by the City to provide for streetscape improvements on Evans Street between 4th and 5th Street. Any streetscape improvements funded by the City with proceeds from the conveyance shall be independent of the streetscape improvements required to be installed by the Buyer in compliance with the City's adopted streetscape master plan.

The Buyer shall submit to the City for reimbursement, invoices and receipts of payments made by the Buyer for expenditures to be funded by the net proceeds, as specified by the Agreement. The City shall submit payment as reimbursement to the Buyer within thirty (30) days following the provision of such proof of payment. The City shall not reimburse, individually or in aggregate, an amount in excess of the net proceeds received by the City from the Buyer for the conveyance of the Property.

- The City shall make efforts to provide for future streetscape improvements along the Evans Street block and within all of Uptown so as to continually foster an environment conducive to economic growth.
- The City shall designate the City owned Harris parking lot (Pitt County tax parcel 23573), located on the corner of 4th Street and Cotanche Street, as a laydown area for the Buyer during hotel construction. The Seller shall be responsible for relocating

the existing leases occupying the Harris parking lot to another public parking location during the construction period.

- The terms of this Exhibit C shall survive and remain in force beyond Closing.

EXHIBIT D

HOTEL PARKING

- The City shall designate in the City owned parking deck, located on the block of 4th Street and Cotanche Street, one parking space per hotel room to be utilized by the Buyer to provide parking for reserved hotel patrons only. The Buyer shall annually lease the designated parking spaces in the City owned parking deck from the City as follows:
 - The City shall lease no more than ten parking spaces in the City owned parking deck to the Buyer at a rate equal to one hundred percent (100%) of the City's monthly public lease rate as included in the City's Manual of Fees and approved by Council on an annual basis as a component of the budget ordinance (the "Full Rate"). The full rate spaces leased to the Buyer shall be designated to the hotel patrons only, twenty four (24) hours per day, seven (7) days per week and not available to the general public.
 - All remaining parking spaces requested to be leased by the Buyer on a monthly basis within the City owned parking deck that are not designated as full rate spaces shall be leased to the Buyer at a rate equal to thirty percent (30%) of the City's monthly public lease rate as included in the City's Manual of Fees and approved by City Council on an annual basis as a component of the budget ordinance (the "Reduced Rate"). The reduced rate spaces shall be designated to reserved hotel patrons only during the timeframe of Monday through Friday between 4 p.m. and 9 a.m. and the weekend timeframe of Friday at 4 p.m. through Monday at 9 a.m. The designated reduced rate spaces shall be available for use by the general public and/or reserved hotel patrons during the timeframe of Monday through Friday between 9 a.m. and 4 p.m.
 - The designated reduced rate and full rate parking spaces leased by the Buyer from the City in the City owned parking deck shall only be used by the Buyer for the benefit of current reserved patrons of the hotel and shall not be used for any other purpose.
 - The annual lease rate charged to the Buyer for the hotel use of the designated reduced rate and full rate parking spaces within the City owned parking deck shall be adjusted on an annual basis to equal the City's monthly public lease rate as included in the City's Manual of Fees and approved by Council on an annual basis as a component of the budget ordinance.

- The City shall designate a minimum of four on-street parking spaces on Evans Street, on the block located between 4th street and 5th Street, as 20 minute parking that will be available to the general public and available to hotel patrons for pick up and drop off parking. The City shall place signage in front of each designated space that shall read as follows: "20 Minute Parking, Pickup/ Drop-Off Parking." The Buyer shall not be required to lease the designated spaces on a monthly basis.
- The City shall install an automated parking access control system in the parking deck that includes the following features:
 - Entry and exit gate arms
 - Automated pay stations to allow the operation without human personnel
 - Parking access control hotel module that will integrate to the hotel allowing hotel guest room key cards to operate the entry and exit lanes for hotel guests
- The terms of this Exhibit D shall survive and remain in force beyond closing.



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Contract award to Communications International, Inc. for the purchase and installation of Public Safety P25 Subscriber Radios and Services

Explanation: In 2020, the City of Greenville contracted TUSA consulting to analyze the existing communications equipment and project future needs. The results of the analysis revealed an immediate need for replacement radio equipment for all Public Safety personnel. The radio equipment utilized by Police and Fire/Rescue personnel has reached an “end of life” status as the production was discontinued by the manufacturer in 2013 and support ended in 2018. As a result, the aging equipment is no longer able to be serviced or repaired. This can result in an inability to effectively provide high quality Police and Fire/Rescue services to the community. The purpose of this contract is to replace aging radio equipment with modern, reliable radio equipment that will serve the community for many years to come. The contract includes the purchase of 608 total radios and includes portable radios assigned to officers, mobile radios installed in vehicles and control stations installed inside Police and Fire/Rescue Stations. Maintenance and repair is also included in the contract price for the first five years for all devices. Maintenance for years 6-10 is \$98,496 per year.

Fiscal Note: The total purchase price for the 608 devices is \$3,297,414.65. The purchase will be financed via installment financing, in conjunction with the other installment financing agreements for the Fire Station #7 construction, Fire Station #1 bay extension, Eppes Recreation Center renovations, community pool construction, and Wildwood Park development. The Fiscal Year 2021-22 Council Adopted General Fund Budget includes appropriations to fund the annual debt costs related to the future installment financing. Additionally, there will be an annual maintenance expense of \$98,496 per year, beginning in FY 2026-27.

Recommendation: Staff recommends City Council award the Public Safety P25 Subscriber Radios and Service contract to Communications International, Inc. for the purchase of 608 devices in the amount of \$3,297,414.65 to be financed via installment financing over a ten-year term.

ATTACHMENTS

-  [Agreement Exhibit 1 Original RFP.pdf](#)
-  [Evaluation Criteria Score Summary.pdf](#)
-  [Letter of Intent - Signed.pdf](#)

-  [Agreement Exhibit 5 Final Pricing.pdf](#)
-  [Purchase Agreement.pdf](#)

Exhibit 1

*The City of Greenville
Request for Proposal
700/800MHz P25 Subscriber Radios and Service*



REQUEST for PROPOSALS

P25 Radio Subscribers and Services

RFP# 20-21-35

Proposal Due Date: June 1, 2021

Location:

City of Greenville

Financial Services Department/Purchasing Division

Attention: Denisha Harris

201 West 5th Street

Greenville, NC 27858

Questions:

Denisha Harris, Financial Services Manager

252.329.4862

Email: dharris@greenvillenc.gov

*The City of Greenville
Request for Proposal
700/800MHz P25 Subscriber Radios and Service*

Date: April 30, 2021

Dear Sir or Madam:

The City of Greenville, North Carolina, is now accepting Proposals for P25 Radio Subscribers. The requirements for submitting a Proposal are stated in the attached Request for Proposals (the "RFP").

Sealed proposals endorsed "P25 Radio Subscribers" to be furnished to the City of Greenville (the "City") will be received by the Financial Services Department, Purchasing Division at 201 West 5th Street, Greenville, NC until 4:00 pm, June 1, 2021. The City reserves the right to reject any or all proposals.

This RFP outlines a description of the products and services sought as well as the corresponding documents. Interested firms will be required to submit one (1) electronic copy of the Proposal on a CD or flash drive in PDF and one (1) original Proposal signed in ink by a company official authorized to make a legal and binding offer. The RFP must be submitted in a sealed box or opaque envelope plainly marked with the Proposal number and service description as follows:

Request for Proposals Attention: Denisha Harris

[Name of Company Submitting Proposal] P25 Radio Subscribers RFP # 20-21-35

It is the intent of the City to select a single provider to provide all the products and services outlined in this RFP. RFP questions must be directed to Denisha Harris, Financial Services Manager, Purchasing Division, per the enclosed instructions.

Sincerely,

Denisha Harris
Financial Services Manager

*The City of Greenville
Request for Proposal
700/800MHz P25 Subscriber Radios and Service*

1. SECTION ONE: GENERAL INSTRUCTIONS TO VENDORS

1.1. READ, REVIEW, AND COMPLY:

It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.

1.2. LATE PROPOSALS:

Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.

1.3. CITY RIGHTS AND OPTIONS:

The City, at its sole discretion, reserves the following rights:

- To supplement, amend, substitute, or otherwise modify this RFP at any time.
- To cancel this RFP with or without the substitution of another RFP.
- To take any action affecting this RFP, this RFP process, or the Services subject to this RFP that would be in the best interests of the City.
- To issue additional requests for information or clarification from Offerors or to allow corrections of errors or omissions.
- To require one or more Service Providers to supplement, clarify or provide additional information in order for the City to evaluate the Responses submitted.
- To negotiate a contract with a Service Provider based on the information provided in response to this RFP.

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1.4. PUBLIC RECORDS:

Any material submitted in response to this RFP will become a “public record.” Proposers must claim any applicable exemptions to disclosure provided by law in their response to this RFP. Proposers must identify materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary and legal. The City reserves the right to make all final determination(s) of the applicability of North Carolina General Statutes § 132-1.2, Confidential Information.

1.5. ACCURACY OF RFP AND RELATED DOCUMENTS:

Each Company must independently evaluate all information provided by the City. The City makes no representations or warranties regarding any information presented in this RFP, or otherwise made available during this procurement process, and assumes no responsibility for conclusions or interpretations derived from such information. In addition, the City will not be bound by or be responsible for any explanation or conclusions regarding this RFP or any related documents other than those provided by an addendum issued by the City. Companies may not rely on any oral statement by the City or its agents, advisors, or consultants.

If a Company identifies potential errors or omissions in this RFP or any other related documents, the Company should immediately notify the City of such potential discrepancy in writing. The City may issue a written addendum if the City determines clarification necessary. Each Company requesting an interpretation will be responsible for delivering such requests to the City's designated representative as directed in RFP Section Three.

1.6. EXPENSE OF SUBMITTAL PREPARATION:

The City accepts no liability, and Companies will have no actionable claims, for reimbursement of any costs or expenses incurred in participating in this solicitation process. This includes expenses and costs related to Proposal submission, submission of written questions, attendance at pre-proposal

*The City of Greenville
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meetings or evaluation interviews, contract negotiations, or activities required for contract execution.

1.7. PROPOSAL BINDING:

This proposal is binding for a period of ninety (90) days.

2. SECTION TWO: GENERAL TERMS AND CONDITIONS

2.1. NON-DISCRIMINATION:

The City of Greenville does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the City are expected to fully comply with the City's non-discrimination policy.

2.2. NON-COLLUSION:

Respondents, by submitting a signed proposal, certify that the accompanying submission is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under North Carolina or United States law.

2.3. PAYMENT TERMS:

The City agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The City does not agree to the payment of late charges or finance charges assessed by the seller or vendor for any reason. Invoices are payable in U.S. funds.

*The City of Greenville
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700/800MHz P25 Subscriber Radios and Service*

2.4. GOVERNING LAW:

Any agreement, contract or purchase order resulting from this invitation to bid, request for proposals or request for qualifications or quotes, shall be governed by the laws of the State of North Carolina.

2.5. ACCEPTANCE/REJECTION OF PROPOSALS:

The City of Greenville reserves the right to award to the Firm who will best serve the interests of the City. The City also reserves the right to waive minor variations in the specifications and in the bidding process, as well as to accept in whole or in part such proposal(s) where it deems it advisable in protection of the best interests of the City. The City further reserves the right to accept or reject any or all bids/proposals, and to award or not award a contract based on this proposal.

2.6. E-VERIFY COMPLIANCE:

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a Subcontractor, the Contractor shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. By submitting a proposal, the Contractor represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.

2.7. CONFLICT OF INTEREST:

Each Contractor shall affirm that no official or employee of the City of Greenville is directly or indirectly interested in this proposal for any reason of personal gain.

*The City of Greenville
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700/800MHz P25 Subscriber Radios and Service*

2.8. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:

The City of Greenville has adopted an Equal Employment Opportunity Clause, which is incorporated into all specifications, purchase orders and contracts, whereby a vendor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry. A copy of this clause may be obtained at the City Clerk's Office, located in City Hall-200 W. Fifth Street Greenville, NC. By submitting a proposal, the firm is attesting that they are an Equal Opportunity Employer.

2.9. MWBE PROGRAM:

Minority and/or Women Business Enterprise (MWBE) Program

It is the policy of the City of Greenville to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts. In accordance with this policy, the City has adopted a Minority and Women Business Enterprise (M/WBE) Plan and subsequent program, outlining verifiable goals.

The City has established a 2% Minority Business Enterprise (MBE) and 2% Women Business Enterprise (WBE) goal for the participation of M/WBE firms in supplying goods and services for the completion of this project. All firms submitting bids agree to utilize minority and women-owned suppliers and service providers whenever possible.

Questions regarding the City's M/WBE Program should be directed to the M/WBE Office at (252) 329-4862.

*The City of Greenville
Request for Proposal
700/800MHz P25 Subscriber Radios and Service*

2.10. FEDERAL LAW:

Federal law (Rehabilitation Act and ADA) prohibits handicapped discrimination by all governmental units. By submitting a proposal, the vendor is attesting to its policy of nondiscrimination regarding the handicapped.

2.11. TAXES:

Sales taxes may be listed on the proposal, but as a separate item. No charge will be allowed for Federal Excise and Transportation tax from which the City is exempt.

2.12. WITHDRAWAL OF PROPOSALS:

No bid/proposal may be changed or withdrawn after the stated time and date for submittal. Bids/proposals submitted shall be binding for ninety (90) days after the date of submittal.

2.13. SERVICES PERFORMED:

All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless The City of Greenville, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.

2.14. INDEPENDENT CONTRACTOR:

It is mutually understood and agreed the Seller is an independent contractor and not an agent of the City of Greenville, and as such, Seller, his or her agents and employees shall not be entitled to any City employment benefits, such as but not limited to vacation, sick leave, insurance, workers' compensation, pension or retirement benefits.

*The City of Greenville
Request for Proposal
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2.15. VERBAL AGREEMENT:

The City will not be bound by any verbal agreements

2.16. INSURANCE REQUIREMENTS:

Contractor shall maintain at its own expense

- a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage; City of Greenville, 200 W. Fifth St. Greenville, NC 27834 shall be named as additional insured.
- b) Professional Liability insurance in an amount not less than \$1,000,000 per occurrence-if providing professional services;
- c) Workers Compensation Insurance as required by the general statutes of the State of North Carolina and Employer's Liability Insurance not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit;
- d) Commercial Automobile Insurance applicable to bodily injury and property damage, covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 per occurrence as applicable. Certificates of Insurance shall be furnished prior to the commencement of Services.

2.17. IRAN DIVESTMENT ACT:

Vendor certifies that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 143-6A-4; (ii) it will not take any actions causing it to appear on any such list during the terms of this contract, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on any list.

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3. SECTION THREE: PROCUREMENT PROCESS

3.1. SCHEDULE AND PROCESS

The following chart shows the schedule of events for the conduct of this RFP. The key events and deadlines for this process are as follows:

Event	Date and Time
Issuance of RFP	Friday April 30, 2021
Deadline to submit questions	May 14, 2021 by 4:00 pm EST
Answers to questions provided	May 21, 2021 by 4:00 pm EST
Proposal Due	June 1, 2021 by 4:00 pm EST

Upon review of the RFP documents, firms may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be emailed to dharris@greenvillenc.gov by the date and time specified above. Vendors should enter as the subject of the email:

“P25 Subscriber Radios and Service RFP # 20-21-35 Questions”

Responses will be posted in the form of an addendum to the RFP on the City’s website at <https://www.greenvillenc.gov/government/financial-services/current-bid-opportunities> and on the State’s IPS website www.ips.state.nc.us. No information, instruction, or advice provided orally or informally, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding.

No contact regarding this RFP will be allowed between Bidders or potential Bidders and employees of the City staff after issuance of the RFP with the exception of the City contact person named on the cover page. Any such contact may disqualify a firm from further consideration. Requests for

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clarification from Bidders will be allowed provided that such requests are made through the Financial Services Manager in writing.

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**4. SECTION FOUR: SCOPE OF P25 RADIO SUBSCRIBERS AND SERVICES
GENERAL RESPONSE PROVISIONS**

4.1. PURPOSE

This Specification encompasses a turnkey project to provide 700/800MHz P25 Subscriber Radios and Services for an existing Project-25 700/800MHz digital simulcast trunked radio network. The City of Greenville, as well as some governmental departments within the City of Greenville operate primarily on the statewide VIPER public safety network and the Pitt County P25 trunked radio system for mutual aid.

This Request for Proposal (RFP) Specification defines key functional and technical aspects of standards based P25 subscriber radios for an enhanced digital radio communications network, aligned toward full Project 25 compliance. The primary public safety agencies that will immediately utilize these new P25 radio subscribers include Greenville Fire and Rescue Department, and Greenville Police Department.

4.2. INSTRUCTIONS

This RFP Specification is a complete document and must be returned intact with vendor responses provided in a point-by-point fashion. The RFP Authorization Form in Section 8 must be completed. All responses and attachments should be placed into the RFP Response immediately behind the area in which the information was requested i.e., a point-by-point response.

If supplementary materials are inserted, each inserted page must be labeled in the bottom margin with the number of the Specification page behind which it is being placed. If more than one page is inserted behind a particular RFP Specification page, then each must be labeled with the appropriate page number plus a letter designator, e.g. 121a, 121b, 121c, etc.

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4.2.1. PRE-RFP CONFERENCE

There will be no Pre-RFP Conference for this RFP.

4.2.2. RFP QUESTIONS

If during the review or preparation of the RFP response submittal, a Contractor discovers any errors, omissions or ambiguities, they should submit, in writing, their questions to the Consultant. Written questions should be received by the Financial Service Manager no later than May 14th, 2021.

4.2.3. LATE RFP RESPONSE SUBMISSION

Any RFP Response submitted after the specified submission due date and time, will not be accepted and will be returned unopened to the submitting organization. All RFP responses will be held in confidence, to the extent permissible by State and County law, as applicable.

4.2.4. RFP RESPONSE SUBMITTAL

The Proposal Response shall be divided into two sections: Subscriber User Equipment Technical and Subscriber User Equipment Pricing. One (1) copy electronic and one (1) copy signed and bound are to be submitted. The Subscriber User Equipment Pricing Responses shall be separated from the Subscriber User Equipment Technical Response and independently sealed (including the electronic copy).

Each Proposal Response shall be submitted in standard 8 1/2" x 11" three ring binders, and must include a PDF file version on separate flash drives with both the Subscriber User Equipment Technical submittal and Subscriber User Equipment Pricing submittal. The entire Response package must be submitted in a sealed container addressed to:

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**Financial Services Manager: Denisha Harris
City of Greenville, Purchasing Division 201 West 5th Street Greenville, NC
27858**

The time and date of the Proposal Opening must be plainly marked on the container as well as the Proposer's name, address, and State Contractor's License Number. All Proposal Responses should be delivered by hand, with receipt requested, or by certified or registered mail. All Proposal Responses become property of the City of Greenville. A cover letter transmitting the Proposal Response must accompany the package.

All Submittals to this RFP are due no later than 4 PM, Tuesday, June 1st, 2021.

4.2.5. PROPOSAL EVALUATION AND SELECTION

Technical and Pricing Proposals shall be evaluated separately using a point system whereby out of a maximum 100 points may be awarded:

- 50 points maximum shall be allocated to Subscriber User Equipment Technical Proposal evaluation
- 30 points maximum shall be allocated to qualifications and references
- 10 points maximum shall be allocated to Subscriber User Equipment Price Proposals.
- 10 points maximum shall be allocated to the votes of the evaluation committee following the half-day hands-on demonstration

Subscriber User Equipment Technical Proposals will first be evaluated for overall responsiveness and completeness to the RFP Specifications. Proposals that are determined responsive and complete will be evaluated by the City of Greenville and the Consultant. Technical Proposals will be graded in performance, compatibility, expansion capabilities, versatility, vendor qualifications, and references with respect to the requirements as

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outlined in this RFP. Points for the corresponding sections will then be awarded by the evaluation committee.

At the direction of the City of Greenville as to the suitability and acceptability of the Subscriber User Equipment Technical Evaluation Results, the City of Greenville and Consultant will next open and evaluate proposed costs for each responsive Subscriber User Equipment Technical Proposal.

The total cost from the Cost Proposals shall be compared, evaluated and scored based on the total cost of ownership for 10 years by the City of Greenville's Finance Department and the Consultant. Thereby yielding a possible total 10 points being allocated to Subscriber User Equipment Price Proposals.

Points will be awarded as follows:

- Least Expense: 10 points
- Second Least Expense: 5 points
- Third Least Expense: 2 points
- Second Most Expense: 0 pts
- Most Expense: 0 pts

The week of June 7th (or date as amended by Addendum), the top two (2) vendors that have submitted a proposal and have not been disqualified by the terms and conditions set forth in this RFP, will be invited to Greenville, NC for a half-day long hands-on demonstration of their End User Subscriber Radio Equipment. During this event, all the agencies cited herein will have a chance to see first-hand all the radios in the proposals. The day following the half day long hands-on demonstration (or as changed by Addendum), the evaluation committee will submit their votes. At that point the proposers will be assigned the appropriate score.

- Most Votes: 8 points

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- Least Votes: 2 points

That Contractor Submittal receiving the highest Overall Project Score (Possible points including: 50pts Technical, 30pts References, 10pts Cost, 10pts Assigned by votes after Half-Day Hands on Event) shall be recommended to the City Manager as being the most responsive, best proposal. In the case of a tied Overall Project Score, the Proposal Submittal having the highest Technical Proposal evaluation shall be recommended to the City Manager.

4.3. DEFINITIONS

Definitions as used herein:

- a. **Responder, Proposer:** Any organization, company, vendor, or supplier responding to this RFP Specification.
- b. **Contractor:** The Proposer to whom a Contract is awarded.
- c. **Proposal, RFP Response, Submittal:** Correspondence or material furnished by Responders in response to this specification.
- d. **The City of Greenville:** Client
- e. **Tusa Consulting Services 2, LLC, TCS or Consultant:** 118 N Conistor Ln, Ste. B, Box 357, Liberty, MO. 64068; (816) 518-9223 Tel.

4.4. RFP PROPOSER STANDARDS

The RFP Responders must have their subscriber radios approved by the North Carolina Voice Interoperability Project for Emergency Responders (VIPER) for use on the VIPER radio network by the time of purchase and must supply documentation supporting this claim. In addition, radio models proposed shall be FCC Type Approved. Radios known to be approved on VIPER are listed: <https://files.nc.gov/ncdps/documents/files/2021-VIPER-Approved-Radio-List.pdf>.

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RFP Responders will likewise be required to provide sufficient information necessary to support claims that user equipment will be functionally and operationally compatible with 700MHz channels (764-767MHz and 773-776MHz, paired with 794-797MHz and 803-806MHz, respectively) as well as the reconfigured 800MHz NPSPAC channel plan as a result of FCC-Ordered 800MHz Rebanding. Failure to propose equipment capable of operations on this new spectrum and/or unable to support Project-25 Phase 1 and Phase 2 operations shall be considered non-responsive and that vendor's RFP submittal shall be given no further consideration.

A factory authorized service center that is fully staffed and trained to support the proposed subscribers, and all related accessories, must be located within 2 hours of the City of Greenville to be considered adequate to satisfy initial installation, warranty and ongoing maintenance needs. The Contractor and all envisioned subcontractors, if any, must be able to legally conduct business within the State of North Carolina, and the City of Greenville.

4.5. WORKMANSHIP

All proposed workmanship supportive of the RFP must conform to normal and accepted standards for the telecommunications industry. The Contractor must completely remove and properly dispose of residue due to its work, return the vehicles to a useable state and will be responsible for the cost of repairing all damage caused by the Contractor or its Sub-Contractors during installation.

The City of Greenville and its Consultant would reserve the right to halt any radio equipment installation process due to poor workmanship, housekeeping, scheduling, work interruptions, etc. Work halts that are the result of poor workmanship would not relieve the Contractor of their responsibility to conform to the installation time requirements as stated by Contract.

4.6. MATERIALS

All equipment, except with the expressed written permission of the City of Greenville and its Consultant, must be new and unused, meet

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telecommunications industry standards, and, where applicable, **be registered with and approved by the Federal Communications Commission**. The City of Greenville or its Consultant would reserve the right to reject and require the return, at the Contractor's expense, of any and all components which are defective or fail to comply with this RFP Specification or lack FCC type approval. Such rejections and/or returns will neither validate nor invalidate the remainder of any Contract. Rejections of material for cause would not provide an extension of time to the Contractor in the performance of contracted requirements.

4.7. SUB-CONTRACTORS

It is intended that a single Contractor have total turnkey responsibility for the subsequent City of Greenville project. Therefore, any Proposer desiring to use Sub-Contractor(s) must include within their RFP Response a list and description of potential, qualified Sub-Contractor(s). The City of Greenville may require documentation and references to ensure the qualification of a proposed Sub-Contractor.

4.8. HANDS-ON PRESENTATIONS

The week of June 7th (or as changed by Addendum), the top two (2) vendors that have submitted a proposal and have not been disqualified by the terms and conditions set forth in this RFP, will be invited to Greenville, NC for a half-day long hands-on demonstration of their End User Subscriber Radio Equipment. During this event, all of the evaluation committee will have a chance to see first-hand all the radios in the proposals.

4.9. CONTACT

All contact and inquiry concerning this RFP Specification shall be directed to:

**Financial Services Manager: Denisha Harris
City of Greenville, Purchasing Division 201 West 5th Street Greenville, NC
27858**

Email: dharris@greenvillenc.gov

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4.10. NOTIFICATION

Responders will be notified of the City of Greenville's desire to enter into additional discussions. The City of Greenville's ranking of proposals shall be published after a recommendation of the best and most advantageous proposal is presented to the City of Greenville's Chief Administrative Officer/Manager or other recognized body.

4.11. MANUFACTURER SUPPORT

The City of Greenville shall accept no less than a three-year warranty for user radio equipment and accessories.

4.12. EXTENDED WARRANTY

The Proposer shall provide pricing for an extended warranty option up to the maximum available for the equipment.

4.13. MAINTENANCE AND DEPOT REPAIR

The Proposer shall provide pricing for any maintenance and depot repair options that including the initial warranty period add up to a total of ten (10) years of support for all proposed portable, mobile, and control station equipment.

4.14. PARTS AVAILABILITY

All proposed end user equipment (i.e. portables, mobile, etc.) repair parts shall be available for at least ten (10) years from the date of initial acceptance of the first order of radios from this RFP and for at least five (5) years from the date of cessation of equipment manufacture for all future orders.

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4.15. REMEDIES

Vendor shall provide a schedule of work to provide subscribers, fleetmap development, radio testing methodology, installations, training, and all other work products required to complete the P25 radio subscribers and services project.

Remedies shall be part of any Contract awarded and negotiated with the Successful Proposer. The scope of these remedies will become part of a negotiated contract and shall minimally include a graduated set of monetary penalties for unexcused late or delayed performance by the Contractor. The project schedule's indicated completion date shall be the basis for assessment of completion remedies.

Remedies shall be applied as follows:

- A. Unexcused project completion delays of between 1 day and 30 days beyond the Contract's indicated completion date shall be assessed a penalty of \$250 per day. Unexcused completion delays that extend from Day 31 through Day 70 beyond the Contract's indicated completion shall be assessed a penalty of \$375 per day. Unexcused completion delays beyond 70 days shall be assessed a remedy of \$500 per day.
- B. Any unexcused project completion delay that exceeds 180 days from the Contract's indicated completion date shall trigger an automatic default of the Contract. If the Contractor is unable to cure the reason for its completion failure within 45 additional days, the Contract will self-cancel and the Owner will initiate action against the Contractor's performance bond unless some acceptable accommodation is reached by the Contractor with the Owner. During the 45-day default period, remedies will be assessed at the rate of \$750 per day.
- C. Remedies shall also apply to warranty repair service. The RFP and its subsequent contract with the Successful Proposer/Contractor include a mandatory warranty period where repair services performed in the field will

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be necessary. These Specifications contain response time periods within which the Contractor is required to provide services and materials. A failure to perform on the part of the Contractor to meet its contracted response time requirements shall result in a financial penalty of the scope and amount indicated by these Specifications or as modified during contract negotiations.

4.16. RIGHT OF REFUSAL

The City of Greenville reserves the right to reject any and all RFP Responses received. Acceptance of any Response will not place the City of Greenville under any obligation to purchase any equipment, system or services.

4.17. PERFORMANCE OF PAYMENT BONDS

A Performance Bond in the amount of one hundred percent (100%) of the Contract Price shall be provided by the Contractor in the event a contract is subsequently awarded through either a sole-source or competitive procurement process. The Performance Bond shall be exercised by the City of Greenville for failure of the Contractor to perform according to the terms of the Contract, i.e., an uncured default condition that results in Contract Cancellation.

The Bond Issuer must be licensed and allowed to operate in the State of North Carolina.

If a Contractor intends to use a subcontractor for the installation of the subscriber radios, a Payment Bond in the amount of one hundred percent (100%) of the Contract price would likewise be required. The Payment Bond must be from a surety company authorized to do business in North Carolina with a rating of A- or better in the most current edition of the A.M. Best Insurance Report.

The cost of these Performance and Payment Bonds shall be the responsibility of the Contractor.

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4.18. PROPOSAL PRICING SUMMARY SHEETS

Responders shall provide detailed price breakdown submittals for subscriber equipment items and installation services. It is not acceptable to lump category costs. Proposers must provide sufficient detail in their pricing proposals whereby it is possible to identify equipment types and services groupings. The format of the price submittal shall follow that as indicated by RFP Section 8.

4.19. CORPORATE RESOLUTION

RFP Response submittals must contain a Corporate Resolution or Power of Attorney authorizing and identifying agents to sign their Proposal or other documents as required by this Specification. This Corporate Resolution or Power of Attorney must be certified and notarized.

4.20. NON-COLLUSION AFFIDAVIT

Proposers must complete and submit the Non-Collusion Affidavit form found in the appendix. Attach an executed original in the Original-Marked proposal submittal and a copy of this executed form in all subsequent proposal copies, as required.

4.21. CORPORATE RESOLUTION

The Proposer must have manufactured, delivered, and installed at least three radio projects of comparable technology (700/800MHz Project-25 digital trunked radio subscribers), having comparable size and scope. These three projects shall be described with enough information that the City or its Consultant can reasonably determine their project equivalency. These submittals should include a detailed summary of the system and its significant operational features/components as well as a current customer contact including name, address, and phone number, title, department, and project responsibility.

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5. INSTALLATION AND TRAINING

5.1. INSTALLATION TIMEFRAME

The Project's anticipated time frame for completion is no greater than six months from a formal Notice to Proceed.

So-called vendor "Standard Contracts" will not be acceptable unless suitably modified to be in compliance with this RFP and/or subsequent RFP Specifications.

5.2. PROJECT MANAGEMENT

The Contractor must prepare and submit a migration plan that will provide a smooth transition to the new subscriber radios including training and cutover prior to beginning any installation work. This plan must be approved by the City of Greenville or its designee. The Contractor shall provide and submit as part of this RFP a plan that shall include:

- A. A completion time period (in days) for the project, based on the City of Greenville's execution of a Notice to Proceed. Proposers shall provide a hypothetical migration plan. These required proposal submittals will be used by the City of Greenville's evaluation committee and Consultant to evaluate the Proposer's ability and understanding of Specification requirements to perform this work in a manner that offers no disruption to ongoing public safety communication operations.
- B. Progress review meetings, in which the Proposer will participate, whose schedule shall be allied with the intensity of installation activities. During actual installation, progress review meetings will be conducted frequently and not less than on a weekly basis. The Contractor shall be responsible for updating and correcting the Project Time Line in response to the actions taken at each progress review meeting such that Proposer's and the City of Greenville's work task responsibilities, and the dates for task completion, are clearly delineated.

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- C. A time schedule for the training of user personnel. Contractor will supply time schedules for the orderly transfer of departments onto the new equipment and the estimated time period when the transfer could be completed.

5.3. TESTING AND ACCEPTANCE PRIOR TO IMPLEMENTATION

Prior to Contract execution, the Successful Contractor must commence negotiations with the City of Greenville's Project Representative and its Consultant to develop a test plan that addresses, minimally, the following major functionality and operability issues:

New user subscriber radios must be tested in coordination with the City of Greenville or its designee prior to installation to gain acceptance. That is, new user subscriber radios will be tested as operationally ready before any new radios are installed or existing radio communications equipment can be decommissioned. This includes testing and approval of the new personality/codeplug. The Contractor must remove the existing user subscriber radios as new subscriber radios are installed. These costs and related engineering services must be included in the RFP Response. Including personality/codeplug creation.

A. End User Subscriber Equipment Testing Requirements

Contractor shall perform a random field test of ten (10%) percent of each type or model of portable radio device provided by the Contract. Failed radios are to be repaired or replaced as necessary. If more than ten (10%) percent of a type or model of equipment tested fails to meet the manufacturer's specifications, then the Contractor shall be required to perform a test of one hundred (100%) percent of that type or model and to replace or repair all failed radios. All mobile radio installations shall require 100% operational test verifications:

1. Verify compliance with vendor specifications for transmitter, receiver and control circuitry;

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2. Check for compliance with RFP requirements and originally proposed functionality;
 3. Check for proper user profile programming of equipment and operation on the network;
 4. Testing of supportive equipment, i.e., speaker/microphone, battery chargers, batteries etc.
- B. Proposers shall submit within their Proposal Submittal a sample test plan that is representative of the scope and complexity of the proposed end user subscriber equipment. This plan must address those items described in this Section.

Contractor is responsible for the provisioning and cost of warehousing, insurance, storage and security of radio user equipment prior to and during the installation phases of the project.

Contractor will assign a Project Manager as a single point of contact between the City of Greenville's Project Representative and the Consultant. Proposer's Project Manager shall be approved by the City of Greenville or designee prior to assignment. The City of Greenville reserves the right to require replacement of the Proposer's Project Manager or its Sub-Contractors at any time during the project should those party's specific workmanship fall below Industry-accepted levels and/or where mandatory project submittals are deficient, are of poor quality or are materially delayed.

Contractor must supply comprehensive training on user operation of portable radios, mobile radios and other user equipment as required by the Contract.

5.4. TRAINING

The City of Greenville considers training to be of paramount importance. User training shall be completed on-site. The City of Greenville would prefer train-

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the-trainer training for 10 people. The Contractor must identify in their RFP Proposal all direct or indirect costs necessary for user training.

The Contractor shall also provide pricing for any options for online or remote continuing education training that can be completed after the project is complete.

5.5. RADIO PROGRAMMING

Contractor will be provided user identification and talk path assignments necessary for personality/codeplug development. Contractors use the existing personality/codeplug to create the necessary file for the new subscriber radios. Contractor shall make recommendations for modifications to the existing programming based on new button and feature availability. Contractor shall provide the necessary programming software for use by the City of Greenville after project acceptance.

Contractor shall program all portable radios, mobile radios, control stations and all other equipment supplied by the Contractor to operate on the FCC-licensed operating frequencies and the talk paths provided by the City of Greenville.

Contractor shall prepare and furnish to the City of Greenville's Project Representative "as programmed" records for each radio placed on the system. These records shall also document the versions of firmware/feature codes installed in user radios.

Contractor must provide to the City of Greenville no less than four sets of radio programming software, appropriately configured laptop computers, and all other support equipment and special cables necessary to program each type of user and control station equipment/device supplied by the Proposer.

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6. PRICING CONSIDERATIONS

6.1. GENERAL PRICING CONSIDERATIONS

This subscriber equipment-pricing portion of this Specification is developed as a guide for Proposers so that the necessary information is provided to the City of Greenville, their designee and Consultant for it to conduct an accurate assessment of proposed cost.

Subscriber equipment (mobiles, portables, control stations and accessories) is intended to be purchased as part of this Specification. Some or all user equipment purchases, and quantities ordered may be delayed or not ordered depending on the City of Greenville financing options and capabilities. The pricing of this equipment for both initial and future purchases will be considered in determining the most advantageous price.

The City of Greenville retains the right to perform life-cycle analysis in determining the best price-value. One important component of such an analysis involves knowledge of the life cycle of the various equipment elements making up a Proposer's solution. The production age of equipment families affects the downstream ability to source software support and is a key factor in determining the operational life of a technology or product.

Proposers shall disclose as part of their Pricing Proposal when user equipment families and the operational software for the technology was first released for sale to the Public. Proposers shall also provide a life-cycle roadmap, referenced by year and so depicts when each of those proposed product elements is likely to be discontinued and when parts/software support will cease to be available.

6.2. PRICING SUMMARIES

Pricing Summaries for Subscriber equipment shall be provided as part of the Proposal Submittal.

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6.3. FUTURE PRICING CONSIDERATIONS

It is the intent of the City of Greenville to operate these new radios for, minimally, the next ten years. As some portions of the subscriber equipment purchased may only be available from one vendor, it is important that the City of Greenville receive reasonable safeguards with regard to future pricing.

6.4. IMMEDIATE FUTURE DISCOUNTS

The City of Greenville requires within the Proposal a certainty of continued purchase at the beneficial initial-contract costs of all equipment, components, parts, materials and software for a minimum of 5 years.

For all purchases within five (5) years after the acceptance date, the discount percentage received by the City of Greenville will be identical to the discount percentages derived from list-price unit equipment costs and proposed unit costs. The Contractor shall define the discount structure for subscriber equipment.

6.5. PURCHASE PRICE DISCOUNT YEARS 6 - 10

For years six (6) through ten (10) after the acceptance date, the City of Greenville's discount from the manufacturer's published equipment list price, as delivered to their authorized sales agents, shall be as follows:

- Subscriber Equipment _____%
- Accessories_____%

6.6. PRICE DISCOUNT YEARS 11 - 15

For years eleven (11) through fifteen (15) after the equipment's acceptance date, the City of Greenville's discount from the manufacturer's published equipment list price as delivered to their authorized sales agents, shall be as follows:

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- Subscriber Equipment _____%
- Accessories_____%

6.7. SUBSCRIBER EQUIPMENT PRICING

Proposers shall develop cost proposals for the subscriber radio, control station, and services listed in this RFP of radio products using the grouped radio for pricing page templates.

Additionally, Proposers shall prepare a detailed optional equipment catalog that describes the full range of options available for all radio groups and indicated portable and mobile radio configurations. The submitted catalog shall include list prices and the proposed discount percentage-reduced initial purchase price.

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7. PUBLIC SAFETY RADIO SUBSCRIBERS

7.1. GENERAL

Currently the City of Greenville utilizes a standard based Project 25 Phase 1 Frequency Division Multiple Access (FDMA) and Phase 2 Time Division Multiple Access (TDMA) simulcast trunking radio system operated by the State of North Carolina known as VIPER. The system was designed to provide 95% mobile coverage statewide. Portable coverage has been determined to be below 95% in-building within the Service Area Reliability at DAQ 3.4 on within the City of Greenville.

Units from the City of Greenville are allowed to utilize the Pitt County P25 trunked system as necessary for mutual aid when providing aid for a County incident.

7.2. NPSPAC MUTUAL AID SYSTEM

The radios will be capable of using the National 7/800MHz Mutual Aid system.

7.3. SUBSCRIBER RADIO GROUPS

Proposers shall develop proposals for the following groups of radio features and functions using the following general format and having, minimally, the following capabilities:

1. FIRE PORTABLE – FIREFIGHTER

FEATURES ACTIVATED/READY TO USE

1. At least 800 talkgroups/channels
2. 700/800MHz operation;
3. APCO Project 25 Phase 1 and Phase 2
4. Multi-line alpha-numeric LCD text display
5. Radio/ Network status icons
6. Limited button keypad

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7. IMBE/AMBE+ vocoders
8. Emergency Button
9. Programmable option buttons
10. Talk group scan
11. System Scan
12. Wide range of optional accessories
13. Spare Battery
14. Separate volume and talk group selection knob
15. Rugged / Fire Rated
16. Noise Cancellation

CAPABLE

17. Private/Individual Call
18. AES voice encryption/multi-key
19. Integrated voice/data
20. Large Knobs
21. GPS

2. FIRE PORTABLE – ADMIN

FEATURES ACTIVATED/READY TO USE

1. At least 400 talkgroups/channels
2. 700/800MHz operation;
3. APCO Project 25 Phase 1 and Phase 2
4. Alpha-numeric LCD text display
5. Radio/ Network status icons
6. Full Keypad
7. IMBE/AMBE+ vocoders
8. Emergency Button
9. Programmable option buttons
10. Talk group scan
11. System Scan
12. Wide range of optional accessories
13. Spare Battery

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14. Separate volume and talk group selection knob
15. Noise Cancelation

CAPABLE

16. Private/Individual Call
17. AES voice encryption/multi-key
18. Integrated voice/data
19. GPS

3. POLICE ADMIN PORTABLE – OFFICER ADMIN

FEATURES ACTIVATED/READY TO USE

1. At least 400 talkgroups/channels
2. 700/800MHz operation;
3. APCO Project 25 Phase 1 and Phase 2
4. Alpha-numeric LCD text display
5. Radio/ Network status icons
6. Full keypad
7. IMBE/AMBE+ vocoders
8. Emergency Button
9. Programmable option buttons
10. Talk group scan
11. System Scan
12. Wide range of optional accessories
13. Spare Battery
14. Separate volume and talk group selection knob
15. AES voice encryption/multi-key
16. Noise Cancelation

CAPABLE

17. Private/Individual Call
18. Integrated voice/data
19. GPS

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4. POLICE OFFICER PORTABLE - OFFICER

FEATURES ACTIVATED/READY TO USE

20. At least 400 talkgroups/channels
21. 700/800MHz operation;
22. APCO Project 25 Phase 1 and Phase 2
23. Alpha-numeric LCD text display
24. Radio/ Network status icons
25. Limited keypad
26. IMBE/AMBE+ vocoders
27. Emergency Button
28. Programmable option buttons
29. Talk group scan
30. System Scan
31. Wide range of optional accessories
32. Spare Battery
33. Separate volume and talk group selection knob
34. AES voice encryption/multi-key
35. Noise Cancellation

CAPABLE

36. Private/Individual Call
37. Integrated voice/data
38. GPS

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7.4. SUBSCRIBER RADIO TYPES & QUANTITIES NEEDED

The following is a list of subscriber radio quantities, types and accessories that are needed per agency.

The City of Greenville Fire Department

- 24 Quantity 700/800 MHz Remote Mount Mobiles
- 28 Quantity 700/800 MHz Dual Head, Remote Mount Mobiles
- 100 Quantity 700/800 MHz Firefighter, Fire Rated Portables
- 20 Quantity 700/800 MHz Fire Admin, Fire Rated Portables
- 8 Quantity 700/800 MHz Control Stations
- 20 Multi-unit Chargers
- 40 Single-unit Chargers
- 20 Vehicular Charger
- 100 Spare Batteries
- 100 Radio Speaker Microphones – Rugged/Fire
- 20 Radio Speaker Microphone – Standard
- 100 Holster with Strap
- 20 Belt Clip
- 6 Multi-unit Charger Wall Mounting Bracket

Pricing Notes:

- Portables may have optional yellow housing
- Portables must be Hazard Locations rated C1D2.
- Control stations must include antenna systems and the installation of the antenna system, plus a 2-hour battery backup.

The City of Greenville Police

- 175 Quantity 700/800MHz Remote Mount Mobiles
- 10 Quantity 700/800MHz Police Admin
- 240 Quantity 700/800MHz Officer Portables
- 2 Quantity 700/800MHz Control Stations
- 10 Multi-unit Chargers

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- 250 Single-unit Chargers
- 50 Vehicular Chargers
- 250 Spare Batteries
- 250 Radio Speaker Microphones
- 250 Earpieces/lapel
- 427 AES Encryption/Multi-key
- 250 Belt Clips
- 10 Multi-Unit Charger Wall Mounting Bracket
- 2 Control Station Mounting Brackets
- 50 Quarter Wave Short Antenna

Pricing Notes:

Control stations must include antenna systems and the installation of the antenna system, plus a 2-hour battery backup.

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8. IDENTIFIED USER NEEDS

8.1. GENERAL

Proposers to this RFP will not be responsible for the development of talk group structures and will be provided all necessary talk group structure information for programming into their end user subscriber radios.

8.2. PUBLIC SAFETY NEEDS

8.2.1. ENCRYPTION

Digital voice encryption, using Advanced Multi-band Excited (AMBE+) vocoder technology coupled with the federally approved Advanced Encryption Standard (AES) digital encryption scheme, is a required feature of the end user subscriber radios.

8.2.2. END USER EQUIPMENT

Law enforcement communications needs have generally shifted from patrol car based, with equipment fixed within vehicles to patrolman based where portable equipment is assigned to individual officers. These same user trends exist within the Fire Service and related public safety agencies.

This migration to portable units, with their reduced output power and often-degraded antenna performance, has placed greater technical demands on radio communications network infrastructures. The coverage needs for mobile-based systems are relatively straightforward as the available effective radiated power from a mobile unit can closely approach that of a base station. Talk-in/talk-out balance for mobile-only operations historically have been readily achieved using straightforward repeater-type configurations.

Portable radio coverage needs place far more stringent demands on radio infrastructure solutions. In most instances, portable radio users often

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operate within radio-resistant areas such as warehouses, office buildings, apartment structures and single-family dwellings. The need for reliable communications within building structures requires increased talk-in/talk-out system gain that impacts system complexity and cost.

Further complicating the design of portable-based radio systems are desired mechanical and ergonomic features, as summarized below:

1. The radio package, itself, must be simple to operate and have a minimum of operator controls or feature selections.
2. Radios contain a microphone, speaker, talk group selector, volume control, power switch, emergency button, and normal transmit push-to-talk button. All of these input/output devices are subject to near-constant physical abuse within a public safety environment.
3. Transmit and receive audio quality and clarity must be high with little evidence of distortion and background “static”. The use of adaptive noise cancellation technology has been shown to materially improve signal clarity in high-noise environment
4. User must be able to disable message authorization tones. In fact, the ability to visually depict different radio talkgroup selections by virtue of radio display color changes is desirable.
5. The volume control must be fully adjustable from zero to maximum audio output level. Volume and talkgroup selection shall not be aggregated into a single knob control.
6. Unit must be extremely rugged to withstand shock and vibration typical of public safety operations. For the Fire Service, other features such as Hazardous Location rating C1D2 operation and the ability for the equipment to survive short-term water submersion are required. Additionally, these highest grouped portable radios must be capable of GPS location transmissions imbedded within P25 voice transactions.

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7. Units must be operable, within the coverage requirements using the smallest half wave flexible antenna available.
8. Radio unit battery packs must provide sufficient power for a twelve-hour work period typical for public safety operations. A range of accessories must be available for support in-field/in-vehicle battery charging.
9. Radio units must be equipped with multi-line alphanumeric displays to more readily identify selected talk groups and operating modes, i.e. clear voice, encrypted voice, unit calling, etc.
10. Radios must be capable of operation with traditional speaker/microphones as well as subminiature radio surveillance accessories.
11. Radio units should be capable of being remotely reprogrammed using the radio system's inherent digital signaling capability. It is highly desirable for radios to also be reprogrammable using local-area private Wi-Fi, Bluetooth and/or commercial cellular (i.e., LTE) connectivity.
12. In addition to the specific desired features indicated above, all furnished equipment must meet minimum equipment requirements identified in Section 8.3

8.3. MINIMUM RADIO EQUIPMENT REQUIREMENTS

This section describes the minimum-acceptable requirements for mobile, portable, and control station. All radio equipment installed by Contractor shall be FCC type accepted under Part 90 of the FCC Rules and Regulations. Additionally, all RFP proposed equipment shall be in current production and shall meet or exceed the requirements of this Section.

The stated minimum requirements, below, for end-user equipment will not necessarily be required on all individual units assigned to differing user

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agencies. Section 6, Pricing Considerations contains those user radio configurations required for each agency/department. All user equipment must be capable of operating on various P25 radio system infrastructures now available from, but not necessarily limited to, major vendors such as JVC Kenwood, L3Harris, Motorola, and Tait. The degree of operations on these other radio systems allows for radio affiliation and use of basic communication functions as defined by current P25 published standards and as verified by independent P25-certified testing facilities.

This RFP allows for vendors to include proprietary features within their radio products to differentiate their products from those offered by competitors. Yet, such proprietary features shall not inhibit the operation and attributes of basic P25 functionality as defined by published TIA-102 trunked feature specifications. Any such degradation found during the implementation of the Contractor's equipment may delay system acceptance and shall be remedied by the Contractor at no additional cost to the City of Greenville.

8.3.1. MOBILE RADIO EQUIPMENT

- A. Meet APCO minimum recommendations and EIA/TIA standards for Project-25 Public Safety 700/800MHz trunked radio systems. Furnished equipment must be operable on both Phase 1 and Phase 2 infrastructures.
- B. Incorporate heavy-duty construction, weather-sealed enclosures and weather-sealed controls to meet Military Standard 810 (latest revision) for water, shock, vibration, dust, humidity and high/ low temperature performance.
- C. Allow operations on Project-25 trunked and conventional (analog/Project-25) systems with priority scan of talk groups or channels.
- D. Front mount and rear mount, dual control-head with single rear mount radio and dual radios with single control-head configurations must be

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available to meet the needs of the different public safety departments. Rear mount radios may require weatherproof control heads, speakers, microphones and other accessories (specific for fire operations). Multi-band mobile radio configurations (using one control head/speaker/microphone to simultaneously control two or more mobile radio transceivers or transceivers having broad-spectrum capabilities) must be available to allow 800MHz trunked/800MHz conventional; VHF/800MHz; UHF/800MHz or VHF/UHF operations, depending upon the types of radio transceivers employed.

- E. Incorporate electronic, alphanumeric displays to provide visual indication of system availability, channel/talk group selection, incoming user ID, call alerts and operational status such as scan and channel busy.
- F. Emergency priority button on mobile radio control panels to initiate an emergency priority call.
- G. External alarm dry-contact closure to provide activation of a horn, light, etc. whenever the radio unit is individually called.
- H. Data transmission capability and appropriate accessory connection to devices supplied by others (i.e., vehicular-mounted computing devices).
- I. Digital voice encryption, using P-25 compliant IMBE/AMBE+ vocoder technology and federally approved AES coding, to provide security during transmission and reception of sensitive communications; required for police, capable for fire.
- J. Radio operating software shall be contained in an electrically erasable memory form that allows remote updating of software configurations and related performance data. Unit shall allow software updates/reprogramming locally from a computer or via the P25 radio network (also known as Over-the-Air Programming or OTAP). Sufficient quantities of programming cables and software shall be part of the

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delivered equipment. Additional methods for programming user radio remotely shall be considered in addition to P25 OTAP, such as via a private, local Wi-Fi connection or through other secured commercial means.

- K. Transmit Time-Out Timer to warn the user of excessive transmission length. Time out timer should automatically disable the radio's transmitter after a pre-determined period, thereby eliminating talk group/channel interference caused by either a defective speaker/microphone or PTT button. Timer should be reset upon operator rekeying (PTT) the radio.
- L. Minimum Electrical Specifications as follows:
- Frequency Range: 764 to 869MHz (standard post rebanding public safety frequencies)
 - Channel Capacity: 24 channels/system (8 systems/tiers)
 - Channel Spacing: 25/12.5KHz; NPSPAC
 - 6.25KHz or TDMA Equivalent
 - Talk Group Capacity: 16 talk groups/system
 - Primary Input Voltage: 11 to 16VDC, negative ground
 - Battery Drain: Standby: 1.5 amperes max.
 - Receive: 4.5 amperes max.
 - Transmit: 15.5 amperes max.
 - Environmental: MIL-STD 810 (C,D,E,F&G) for shock, vibration, humidity, temperature and blowing rain. EIA/TIA-603 for shock and vibration stability.
 - Talk Group Selection: Rotary-knob style.

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Transmitter

- RF Output Impedance: 50 Ohms
- Output Power: Sufficient power to achieve required coverage, not less than 10 watts
- Frequency Stability: +/- 1.5PPM from -30°C to 60°C
- Modulation Deviation:
 - +/- 5KHz for 25KHz Channel (FM)
 - +/- 4KHz for NPSPAC (FM)
- P25 Phase 1 – C4FM/12KHz channel
- P25 Phase 2 – TDMA
- Audio Response: Within +1, -3dB of a 6dB/ octave
- Audio Distortion: Less than 2% @ 1KHz
- Spurious/Harmonic: -60db below carrier
- Hum and Noise: -45db or greater
- Duty Cycle (EIA): Transmitter 20%

Receiver

- Modulation Acceptance: +/- 7KHz
- Selectivity: -60dB minimum for 12.5KHz channel.
- Sensitivity: -116 dBm (5% BER (C4FM))
- Intermodulation: -75dB
- Spurious/Image: -80dB

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- Frequency Stability: +/- 1.5PPM from -30° to 60°C
- Audio Output: 10 watts, with no more than 3% distortion at 1KHz
- Duty Cycle (EIA): Receiver 100%

8.4. PORTABLE RADIO EQUIPMENT

- A. Meet APCO minimum recommendations and EIA/ TIA standards for Project-25 Public Safety 700/800MHz trunked radio systems. Furnished equipment must be operable on both Phase 1 and Phase 2 infrastructures.
- B. Heavy duty construction and weather-sealed cases to meet Military Standards 810 C,D,E,F&G for shock, vibration, dust, humidity, high/low temperature and blowing rain.
- C. Allow operations on Project-25 (Phase 1 and 2) trunked and/ or conventional (analog/ Project-25) systems with priority scan of talk groups or channels.
- D. Top-mounted rotary controls with positive stops for volume and channel selection. Control placement must be sufficient to allow gloved-hand operation, as is typically needed by the fire service.
- E. Incorporate electronic, alphanumeric display to provide visual indication of system availability, channel/talk group selected, incoming user ID, call alerts and operational status such as scan, transmit or low battery.
- F. Transmit Time-Out Timer to warn the user that the radio may be transmitting longer than a predetermined time limit and then automatically disable the transmitter. Timer is to be reset upon the operator rekeying (PTT) the radio
- G. No protruding push-to-talk switch, thereby preventing accidental transmitter operation or damage to the switch as caused by impact.

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- H. Protected emergency button to allow easy access when needed but incorporating an ergonomic design whereby the emergency function could not be accidentally activated.
- I. An accessory receptacle shall be provided for the connection of external devices such as remote microphones or combination remote speaker/microphone units (with or without antenna), vehicular adapters and mobile data computer equipment.
- J. Radio operating software shall be contained in an electrically erasable memory form that allows remote updating of software configurations and related performance data. Unit shall allow software updates/reprogramming locally from a computer or via the P25 radio network (also known as Over-the-Air Programming or OTAP). Sufficient quantities of programming cables and software shall be part of the delivered equipment. Additional methods for programming user radio remotely shall be considered in addition to P25 OTAP, such as via a private, local Wi-Fi connection or through other secured commercial means.
- K. Portable radios, batteries and accessories (used by the fire & some police service) proposed must be approved by Factory Mutual as intrinsically safe as per FM Approved Class Number 3640: Approved Standard for Land Mobile Radios for use in Class I, Division 1 Hazardous (Classified) Locations.
- L. Carrying case options should include leather-carrying case with swivel mounts, as well as chemical-resistant cases (nylon or similar plastic material) for use by hazardous material groups.
- M. Optional surveillance accessories such as miniature microphones, earpieces and remote microphones and headset speaker microphones must be available.

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- M. Digital voice encryption, using both APCO Phase 1 and Phase 2 vocoders (i.e., Digital Voice Systems, Inc. IMBE and AMBE+ vocoder, respectively) and federally approved Advanced Encryption Standard (AES) coding, to provide enhanced security during transmission and reception of sensitive communications. It should be possible to re-key encrypted radios remotely via the P25 radio network using a secure method having programmer authentication; required for police, capable for fire.
- N. Provide single unit 120VAC rapid chargers capable of fully charging a discharged high-capacity battery pack within a four-hour period. Provide optional single unit 12VDC rapid chargers for vehicular operation. Quantities required are contained in RFP Section 2.
- O. All battery packs, including spare battery packs, shall utilize Lithium chemistry and shall operate the proposed radio equipment a minimum of twelve-hours using a duty cycle of 5% transmit, 5% receive and 90% standby.
- P. Radios must be operable on post-Rebanding 800MHz NPSPAC frequencies as well as 700/800MHz conventional and trunked frequencies.
- Q. User-programmable audible alert notification in the event of loss of P25 network trunked control channel (i.e., out-of-range condition). This must be a standard feature in present and all future-proposed public safety models. Once an out-of-range condition has been observed, the radio (using a pre-programmed sequence of roaming commands/parameters) shall automatically initial and seek to affiliate with an authorized nearby radio system(s), if available.
- R. Minimum electrical specifications as follows:
- Frequency Range: 764 to 869MHz (standard post Rebanding public safety frequencies)
 - Channel Capacity: 24 channels/system (8 systems/tiers)

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- Talk Group Capacity: 16 talk group/system
- Channel Spacing: 25/12.5KHz; NPSPAC/
- 6.25KHz or TDMA Equivalent
- Temperature Range: -30°C to +60°C
- Humidity:95% relative humidity @ 50°C
- Environmental: MIL STD 810 C,D,E,F&G for shock, vibration, humidity, temperature and blowing rain. EIA/TIA-603 for shock and vibration stability.
- Talk Group Selection: Rotary-knob style

Transmitter

- RF Output Impedance:50 Ohms
- Power Output: Sufficient power to achieve required coverage, but not less than 2.5 watts
- Frequency Stability: +/- 1.5PPM from -30°C to +60°C
- Modulation Deviation:
 - +/- 5KHz for 25KHz Channel (FM)
 - +/- 4KHz for NPSPAC (FM)
- P25 Phase 1 – C4FM/12KHz channel
- P25 Phase 2 –TDMA
- Audio Response: Within +1, -3dB of a 6dB/ octave
- Audio Distortion: Less than 2% @ 1KHz

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- Spurious/Harmonic: -75dB
- Duty Cycle (EIA): N/A

Receiver

- Mod. Acceptance: +/- 7KHz
- Selectivity:-70dB minimum (25KHz channel)
- Sensitivity: -116 dBm (5% BER (C4FM))
- Intermodulation:-70dB
- Spurious/Image: -70dB
- Frequency Stability: +/-1.5PPM from -30° to +60°C
- Audio Output: 500 milliwatts @ no more than 2% distortion
- Duty Cycle (EIA):Receiver 100%

8.5. CONTROL STATION EQUIPMENT

- A. Available either as integrated 120VAC-powered desktop radio cabinet or a remotely located, AC-powered radio package each having the capability of being operated via a separate, extended remote control unit (capacity to be operated from no less than two remote locations within 500ft of host control station).
- B. Provision shall be provided for both local and remote-control operation of the control station.
- C. Meet APCO minimum recommendations and EIA/TIA standards for Project-25 Public Safety 700/800MHz trunked radio systems. Furnished equipment must be operable on both Phase 1 and Phase 2 infrastructures.

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- D. Allow operation on Project-25 (Phase 1 and 2) trunked and conventional (analog/ Project-25) systems with priority scan of talk groups or channels.
- E. Digital voice encryption, using both APCO Phase 1 and Phase 2 vocoders (i.e., Digital Voice Systems Inc. IMBE and AMBE+ vocoder, respectively) and federally approved Advanced Encryption Standard (AES) coding, to provide enhanced security during transmission and reception of sensitive communications. It should be possible to re-key encrypted control station radios remotely via the P25 radio network using a secure method having programmer authentication; required for police, capable for fire.
- F. Incorporate electronic, alphanumeric displays to provide visual indication of system availability, channel/talk group selection, incoming user ID, call alerts and operational status such as scan and channel busy.
- G. Transmit Time-Out Timer to warn the user that the radio may be transmitting longer than a predetermined time limit and then automatically disable the transmitter. Timer is to be reset upon re-keying (PTT) the radio.
- H. Control station packaging shall incorporate sufficient electro-magnetic shielding of radio and power supply components to allow multiple control stations to be located at the same physical site/facility without causing unit-to-unit interference.
- I. Proposed control station radios must be operable on post-Rebanding 800MHz NPSPAC frequencies as well as 700/800MHz conventional and trunked frequencies.
- J. Minimum electrical specifications as follows:
 - Frequency Range: 764 to 869MHz (standard post rebanding public safety frequencies)
 - Channel Capacity: 24 channels/system (8 systems/tiers)
 - Talk Group Capacity: 16 talk groups per system/tier, minimum

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- Channel Spacing:
 - +/- 5KHz for 25KHz Channel (FM)
 - +/- 4KHz for NPSPAC (FM)
- P25 Phase 1 – C4FM/12KHz channel
- P25 Phase 2 –TDMA
- Input Voltage:120VAC, 60Hz, single-phase with 3 conductor grounded line cord
- Environmental: MIL-STD 810 C,D,E,F&G for shock, vibration, humidity, temperature and blowing rain. EIA/TIA-603 for shock and vibration stability.
- Talk Group Selection: Rotary-knob and via remote controller(s)

Transmitter

- RF Output Impedance:50 Ohms
- Power Output: Sufficient power to provide required radio coverage, but not less than 10 watts
- Frequency Stability: 1.5PPM from -25°C to 60°C
- Modulation Deviation:
 - +/- 5KHz for 25KHz Channel
 - +/- 2.5KHz for 12.5KHz Channel
 - +/- 4KHz for NPSPAC
- Emission Designators:11K0F3E;8K10F1E;16K0F3E; 8K10F1D
- Spurious/Harmonic: At least 70 dB below carrier

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- Audio Response: Within +1, -3dB of a 6dB/ octave
- Audio Distortion: Less than 3% @ 1KHz
- Duty Cycle (EIA): Transmitter 20%

Receiver

- Modulation Acceptance: +/- 7KHz
- Selectivity:-60dB
- Sensitivity:-116 dBm (5% BER (C4FM))
- Intermodulation:-70dB
- Spurious/Image: -75dB
- Frequency Stability: 1.5PPM from -25° to 60°C
- Audio Output: 1.5 watts @ no more than 3% distortion at 1KHz
- Duty Cycle (EIA): Receiver 100%

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Proposal Authorization Form

(To be submitted with each Price Proposal)

I (or we) do hereby declare that I (or we) have carefully examined this RFP Specification and the annexed Addenda numbered _____, and I (or we) have a clear understanding of said Specifications, and shall provide the required communications equipment and the necessary tools, machinery, apparatus, and other means of construction/installation, and to furnish all labor, materials, and services specified in the Contract or called for in the said Specifications (including all taxes/fees) necessary for the completion of the work described herein.

Respectfully submitted,

By:

Authorized Signature Title

Business Name Business Address

Telephone Number Date

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NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____, being first duly sworn, deposes and says that:

- (1) Executor is (Owner) (Partner) (Officer) (Representative) or (Agent), of _____, the Proposer that has submitted the attached Proposal Response;
- (2) Such Proposal Response is genuine and is not a collusive or sham Proposal;
- (3) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties of interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly, or indirectly with any other Proposer, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal Response has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly sought by agreement or collusion or communication or conference with any other Proposer, or to fix any overhead, profit or cost element of the Proposer price or the Proposer price of any other proposer, or to secure through any advantage against the City of Greenville or any person interested in the proposed Contract; and
- (4) The price or prices quoted in the attached Proposal Response are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Subscribed and sworn to, this _____ day of _____, 201_____.

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1.1. BROKERAGE FEE

The Contractor warrants that he has not employed any person to solicit or secure this Contract upon an agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the City of Greenville the right to terminate the Contract, or, at the discretion of the City of Greenville, to deduct from the Contract price or consideration, the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by contractors upon contracts or established commercial or selling agencies maintained by the Contractor for the purpose of securing business. No elected official or employee of the City of Greenville shall be permitted to share any part of this Contract or any benefit that may arise wherefrom, and any contract made by the City of Greenville in which such individual(s) shall be personally interested shall be void, and no payments shall be made thereon by the City of Greenville or any officers thereof.

1.2. CONFLICT OF INTEREST

In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City of Greenville, and in recognition of the Contractor's professional responsibility to the City of Greenville, the Contractor agrees to decline any offer of employment if its independent professional work on behalf of the City of Greenville is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City of Greenville and provide full disclosure of the possible effects of such employment on the Contractor's independent, professional work on behalf of the City of Greenville. Final decision on any disputed offers of other employment for the Contractor shall rest with the City of Greenville.

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1.3. CONTRACTS

This Specification and the Proposer's Response will be an integral part of the Contract. Any and all statements made in the Proposal Response will automatically become part of the final Contract for equipment and services. Inability to contractually guarantee any statement made in their Proposal Response will result in Proposer disqualification.

Omission in the Proposal Response of any equipment, services or provisions herein prescribed shall not be construed so as to relieve the Contractor of any responsibility or obligation necessary to the complete and satisfactory installation of any and all systems, equipment, and services specified. Any optional prices quoted must include all equipment, service, features, materials, labor, etc. necessary to make all the features, services, and equipment, which are included, fully functional. The Proposer agrees that the cost of additional equipment, materials, or labor necessary to meet these requirements, which was not otherwise calculated in his Proposal Response, shall be solely at the Contractor's expense.

If there are specific items that are purposefully excluded in the Proposer's indicated price, those must be defined by the Proposer's submittal. If, however, those Proposer-excluded items are what the City of Greenville and its Consultant consider to be normal and customary for a project of this type, any proposal response excluding such items will be graded as not meeting minimum requirements for the appropriate Specification category(s) that are impacted by that exclusion.

Each Proposal Response must be signed by a duly authorized officer who is empowered to contractually bind the Proposer.

The City of Greenville shall enter into contract negotiations with the apparent responsive and best Proposer. Should the City of Greenville be unable to negotiate a Contract with the apparent responsive and best Proposer, the City of Greenville may exercise the right to enter into Contract negotiations with the apparent responsive Proposer having the next-highest evaluation score.

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1.4. NON-APPROPRIATION OF FUNDS

In the event no funds or insufficient funds are appropriated and budgeted by the City of Greenville or are otherwise unavailable for fulfilling the requirements of the Contract, the obligations of the City of Greenville shall terminate on the last day of the fiscal period for which appropriations are received without penalty or expense to the City of Greenville of any kind whatsoever. The City of Greenville will immediately notify the Contractor or its assignee of such occurrence. In the event of such termination, the City of Greenville agrees to peaceably surrender possession of the equipment to the Contractor or its assignee on the date of such termination. The Contractor will be responsible for packing all equipment and any freight charges. The City of Greenville will not cancel if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the equipment or other equipment performing similar functions for the current fiscal period in which the termination occurs or the next succeeding fiscal period thereafter and that it will not during the funding period give priority to other functionally similar equipment or services.

The Contractor shall covenant and agree to indemnify and hold the City of Greenville harmless against any loss, damage liability, cost, penalty, or expense, including attorney's fees, which it is not otherwise agreed to by the City of Greenville in the equipment Contract and which is incurred and arises upon a failure of the City of Greenville to appropriate funds in the manner described herein for a continuation of the Contract or exercise of the option to purchase the equipment.

1.5. TERMINATION FOR CONVENIENCE (“TFC”).

Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

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1.6. CHOICE OF LAW AND FORUM;

This contract shall be deemed made in Pitt County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina and not the United Nations Convention on Contracts for the International Sale of Goods. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Pitt County. Such actions shall neither be commenced in nor removed to federal court.

1.7. PURCHASE PAYMENT SCHEDULE

The following payment schedule shall apply:

- 20% - at Contract execution
- 50% - at delivery of and inventory by the City of Greenville designee of components to Proposer's warehouse within 2 hours of the City of Greenville
- 15% - upon issuance of portable subscriber equipment and satisfactory completion of all training
- 15% - upon installation of mobile subscriber equipment and control stations and satisfactory completion of all training

The Proposer agrees that all prices quoted in its Proposal Response are valid for one year from the Contract execution date. Future price discounts are valid for the time periods indicated in Section 6.3.

1.8. CONTRACTOR'S INSURANCE

The Contractor shall be responsible for any and all loss of material connected with the construction due to unexplained disappearance, theft or misappropriation of any kind or nature. The foregoing provisions shall not

*The City of Greenville
Request for Proposal
700/800MHz P25 Subscriber Radios and Service*

operate to relieve the Contractor and any Subcontractors of responsibility for loss or damage to their own or rented property or property of their employees of whatever kind or nature, including but not limited to tools, equipment, forms, scaffolding and temporary structures including their contents. The City of Greenville shall in no event be liable for any loss or damage to any of the aforementioned items or any other property of Contractor and any Subcontractors, which is not included in the permanent construction. The Contractor and any Subcontractors hereby waive any right of recovery they may have against the City of Greenville for damage or destruction of property of whatever kind or nature whether it is their own property or property of their employees.

The Contractor shall procure and maintain for the duration of the Contract the following insurance policies as mandated by and with minimum limits set by the City of Greenville's Procurement Policy with coverage for occurrences and claims that may arise from or in connection with the performance of the obligations hereunder by the Contractor, its agents, employees, representatives and subcontractors:

1. A policy or policies to insure the Contractor for legal liability on account of personal injury (including death resulting wherefrom) or loss of or damage to property however arising in the execution of this Contract and specifically including explosion, collapse, and underground damage. The combined liability limits shall not be less than \$2,000,000. This insurance shall include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage. "Claims made" form shall not be acceptable. The "occurrence form" shall not have a "sunset clause".
2. The policy or policies for this combined liability shall also include products/completed operations liability for one year after completion of the work and acceptance by the City of Greenville.

*The City of Greenville
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3. A policy to cover the full liability of the Contractor in accordance with the provisions of the Worker's Compensation Law of the State of North Carolina. The Contractor shall also maintain employer's liability coverage with limits of not less than \$2,000,000 per year. The Contractor shall also obtain from its Workers' Compensation Insurance carrier a waiver of subrogation in favor of the City of Greenville.
4. The Contractor will provide evidence of automobiles liability coverage for owned, non-owned and/or hired vehicles in limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
5. The policies or certificates evidencing the coverage provided above shall be submitted at a Pre-Construction Conference prior to commencing any work or the City of Greenville issuance of a formal Notice to Proceed. Such policies or certificates shall provide that insurance will not be materially altered or cancelled without thirty (30) days prior written notice to the City of Greenville.

1.9. OTHER PROVISIONS

The insurance policies required by the Contract shall contain, or be endorsed to contain, the following provisions:

1. The City of Greenville, its officers, agents, servants and employees, shall be added as "additional insureds" under the Comprehensive General Liability and Automobile Liability Coverages.
2. The Workers' Compensation and Employer's Liability coverages shall contain an express waiver of all rights of subrogation against the City of Greenville, its officers, agents, servants, and employees, for losses arising from work performed by the Contractor for the City of Greenville.
3. All insurance policies required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or

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Request for Proposal
700/800MHz P25 Subscriber Radios and Service*

reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail has been given to the City of Greenville.

1.10. ACCEPTABILITY OF INSURERS

All insurance required by this Section shall be placed with insurers that are authorized to do business in North Carolina and have a rating of no less than A- in the most current edition of the A.M. Best Insurance Report. Insurers shall have a minimum financial size category of V2I according to A.M. Best.

1.11. CERTIFICATES OF INSURANCE

The Contractor shall furnish to the City of Greenville Certificates of Insurance affecting coverage required by this Contract. The certificates are to be signed by a state licensed agent authorized by that insurer to bind coverage on its behalf and endorsements. The certificates and endorsements must be received and approved by the City of Greenville prior to the Contract's effective date.

1.12. INDEMNITY

Indemnity shall be negotiated with the apparent responsive and best Proposer as part of Contract negotiations.

END OF FORM

Evaluation Score Sheet

		L3 Harris				
<i>Department</i>	<i>Evaluator</i>	<i>Weighted Score</i>	<i>Technical Performance (50%)</i>	<i>Qualifications & References (30%)</i>	<i>Financial (10%)</i>	<i>Hands On (10%)</i>
F/R	1	88.40	45.95	29.46	5.00	8.00
F/R	2	87.70	45.95	28.75	5.00	8.00
F/R	3	88.95	45.95	30.00	5.00	8.00
PD	4	91.92	50.00	28.92	5.00	8.00
PD	5	91.92	50.00	28.92	5.00	8.00
PD	6	91.92	50.00	28.92	5.00	8.00
IT	7	92.49	49.49	30.00	5.00	8.00
TUSA	8	92.54	49.54	30.00	5.00	8.00
TOTAL		725.83	386.88	234.95	40.00	64.00
Average Score		90.73				
Pricing Proposal						
Base Bid Price		\$ 3,998,313.48				
Apples to Apples Price		\$ 3,830,017.32				

		Motorola				
<i>Weighted Score</i>	<i>Technical Performance (50%)</i>	<i>Qualifications & References (30%)</i>	<i>Financial (10%)</i>	<i>Hands On (10%)</i>		
85.10	45.95	27.15	10.00	2.00		
85.37	45.95	27.42	10.00	2.00		
84.96	45.95	27.02	10.00	2.00		
89.83	50.00	27.83	10.00	2.00		
90.10	50.00	28.10	10.00	2.00		
89.83	50.00	27.83	10.00	2.00		
92.00	50.00	30.00	10.00	2.00		
91.73	50.00	29.73	10.00	2.00		
708.92	387.84	225.08	80.00	16.00		
88.62						
\$ 2,496,859.00						
\$ 3,354,940.75						

July 23, 2021

OBJECT: LETTER OF INTENT FOR PURCHASE OF RADIO EQUIPMENT

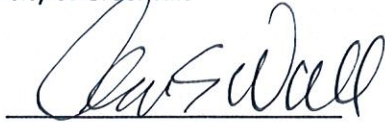
Dear Mr. Wayne Farrow

The City of Greenville intends to purchase certain radio equipment from Communications International. The purpose of the letter of intent is to summarize our discussions to date and confirm our respective intentions with respect to the proposed transaction.

1. The City of Greenville intends to purchase the equipment identified in "City of Greenville Pricing Pages" document (Exhibit 1).
2. This purchase is subject to approval of the Greenville City Council and will be heard for consideration at the August 9, 2021 meeting.
3. This purchase is subject to approval of the North Carolina Local Government Commission and will be heard for consideration at the September 14, 2021 meeting.
4. The City of Greenville and Communications International will use their best efforts to execute the purchase agreement as soon as proper approval from Greenville City Council and North Carolina Government Commission is obtained.

Sincerely,

City of Greenville



Ann Wall, City Manager

7/23/21

Date

Communications International



Jeana Quintana, CFO

7/23/21

Date



City of Greenville Pricing Pages

Fire Dept - Remote Mount Mobiles

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	Negotiation Notes
L3Harris XL-185M XL-185M Mobile 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Universal XL-Mobile Mounting Kit Think Mount Low Loss Coax Standard XL Microphone External Speaker with Cable XL-CH Control Unit Subtotal Equipment	24	\$8,487.03	\$6,265.28	\$150,366.72	Removed 3DB whip antenna to be replaced with 3DB Laird antenna priced in added items below.
\$150,366.72					

Fire Dept - Remote Mount Dual Control Mobiles

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	Negotiation Notes
L3Harris XL-185M Dual Controls XL-185M Mobile 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Universal XL-Mobile Mounting Kit 3DB Antenna with Thick Mount Low Loss Coax Antenna, Base, Strnd Roof Mnt Low Loss GPS (2) Standard XL Microphone (2) External Speaker with Cable (2) XL-CH Control Unit Bracket for Control Head Ethernet Cable Power Cable Speaker ACCY Cable Subtotal Equipment	28	\$10,661.03	\$7,895.78	\$221,081.84	Remove 3DB Antenna with Thick Mount Low Loss Coax Add Antenna, Base, Strnd Roof Mnt Low Loss GPS (+\$1,890.00)
\$221,081.84					



Exhibit 1

Fire Dept - Control Stations (CS) w/ Battery Back up

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M Control Station XL-185M Mobile 700/800 Mhz P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Cabinet, XL Desktop w/ power/ethernet/vasssy cables Desktop Microphone XL-CH Control Unit Mounting Bracket for Control Head Single Key DES/AES Encryption	8	\$8,911.03	\$6,733.28	\$53,866.24
Subtotal Equipment				\$53,866.24

Police Dept - Remote Mount Mobiles

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M XL-185M Mobile 700/800 Mhz Encryption, 256-AES, 64-DES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Universal XL-Mobile Mounting Kit Standard Roof Mount Low Loss Standard XL Microphone External Speaker with Cable XL-CH Control Unit	175	\$9,077.01	\$6,782.76	\$1,186,983.00
Subtotal Equipment				\$1,186,983.00

Removed 3DB whip antenna to be replaced with 3DB Laird antenna priced in added items below.



Exhibit 1

Police Dept - Control Stations (CS) w/ Battery Back up

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M Control Station XL-185M Mobile 700/800 Mhz P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Cabinet, XL Desktop w/ power/ethernet/vassay cables	3	\$9,606.01	\$7,254.51	\$21,763.53
Desktop Microphone XL-CH Control Unit Mounting Bracket for Control Head Encryption 256-AES, 64-DES				
Subtotal Equipment				\$21,763.53

Fire Dept - Portables Firefighters

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185P, PKP, BLK XL-185P Portable 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) (2) Li-Ion Battery (4800) Hazloc Radio C1D2 Antenna 1/2 wave whip (762-870 MHz) Speaker Mic REVO NC2 C1D2	100	\$5,515.04	\$3,773.79	\$377,379.00
Subtotal Equipment				\$377,379.00

Removed Leather Cases (-\$12,750.00)
Optional XL Fire Speaker Mic \$495.00 (XF-AE3J)
(\$445 ea. With \$50 trade in of REVO NC2 C1D2)



Exhibit 1

Fire Dept - Portables Admin

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185P, FKP, BLK XL-185P Portable 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) (2) Li-Ion Battery (4800) Antenna 1/2 wave whip (762-870 MHz) Belt Clip Standard Speaker Mic	20	\$4,910.04	\$3,863.79	\$77,275.80
Subtotal Equipment				\$77,275.80

Fire Dept - Portables Chargers

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
(40) Charger 1 Bay XL185P (20) Charger 6 Bay XL185P (6) Wall Mount Kits for 6 Bay XL185P (20) Charger VC4000 (20) Power Adapter Kit for VC4000				\$23,017.50
Subtotal Equipment				\$23,017.50

No Change



Exhibit 1

Police Dept - Portables Admin

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	
L3Harris XL-185P, FKP, BLK XL-185P Portable 700/800 Mhz Encryption 256 - AES, 64 - DES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Li-Ion Battery (4800) Antenna 1/2 wave whip (762-870 MHz) CASE LEATHER, PREMIUM, BELT LOOP, D-SWIVEL REVO NC2 C1D2 Speaker Mic Charger 1 Bay XL185P	10	\$5,880.02	\$4,460.02	\$44,600.20	Remove Metal Belt Clip Add CASE LEATHER, PREMIUM, BELT LOOP, D-SWIVEL (+862.50) Replaced Standard Spkr/Mic with REVO NC2
Subtotal Equipment				\$44,600.20	

Police Dept - Portables Officers

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	
L3Harris XL-185P, PKP, BLK XL-185P Portable 700/800 Mhz Encryption 256 - AES, 64 - DES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Li-Ion Battery (4800) Antenna 1/2 wave whip (762-870 MHz) Belt Clip Speaker Mic, REVO NC2 C1D2 Charger 1 Bay XL185P	240	\$5,570.02	\$4,227.52	\$1,014,604.80	Remove Standard Speaker Mic Add REVO NC2 Speaker Mic (-\$900.00)
Subtotal Equipment				\$1,014,604.80	



Exhibit 1

Police Dept - Additional

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
(250) Microphone, Palm 2 Wire, Blk				
(50) Antenna 1/2 Wave 762-870 MHz				
(250) Spare Li-Ion Hi-Cap Batteries				
(10) 6 Bay Chargers for XL-185P				\$91,950.00
(10) Wall Mount Kits for 6 Bay				
(50) VC4000 Chargers				
(50) Power Adapters for VC4000				
Subtotal Equipment				\$91,950.00

Removed 1/4 wave antennas; replaced with 1/2 antennas (Spare)

Programming Equipment

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
(4) USB Programming Cables				
(4) RPM/RPM 2 with annual updates (NO DONGLE)				
(4) USB Type A to Type C Programming Cable				
(4) Dell Latitude Laptop Computers				
(1) SW, Dist Kit, Profile Manager				\$20,608.62
(1) USB Data Cable				
Subtotal Equipment				\$20,608.62

No Change

Device Manager - Cloud Based Applications

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
Subtotal Equipment				\$0.00



Exhibit 1

Additional Items Requested in Negotiations							Items added after final negotiation review Specify final configuration at time of order
KYDEX Z9 Holster (w/ D-Ring or Belt Loops)	100		\$39.95		\$35,342.68		
Leather Strap for Holster (PN-CC14524-001)	100		\$45.00		\$3,995.00		
Havis Console Upper Trim (PN-CEB30HXLP)	227		\$30.28		\$6,873.56		
Havis Console Lower Trim (PN-CFP)	227		\$11.56		\$2,624.12		
Dongles for Tactical headsets (estimated)	20		\$150.00		\$3,000.00		
Tactical headset (Liberator 2 Helmet)	3		\$1,000.00		\$3,000.00		
Laid antenna (ETRAB8063)	227		\$50.00		\$11,350.00		

Training/ATP/PMIP					\$37,171.80		
Train the Trainer Subscription/RPM (10 students)							
Acceptance Testing per agreed ATP							
On-site PM during project implementation							
Terminal Services					\$59,348.27		
Develop profiles							
Program mobiles/portables/control stations							
Operational testing							
Installation Services					\$196,995.30		
Install rear mount mobiles							
Install dual control mobiles							
Decommission existing mobiles							
Control station parts antenna systems							
Install control stations							
2 hour battery back up system (UPS) x 11	11		\$481.50		\$5,296.50		\$5,296.52
BID Bond							\$46,142.23
Bond per RFP requirements							
Total for Equipment and Services					\$3,663,794.05		
Special Quantity Discount							-\$366,379.41
RFP Price for Equipment and Services					\$3,297,414.65		



Exhibit 1

Terminal Maintenance

Description	Number Req'd	Unit Cost	Extended Cost	
YEAR 1 PREVENTIVE TERMINAL MAINTENANCE	608	\$0.00	\$0.00	Included with 5 year warranty
YEAR 2 PREVENTIVE TERMINAL MAINTENANCE	608	\$0.00	\$0.00	Included with 5 year warranty
YEAR 3 PREVENTIVE TERMINAL MAINTENANCE	608	\$0.00	\$0.00	Included with 5 year warranty
YEAR 4 PREVENTIVE TERMINAL MAINTENANCE	608	\$0.00	\$0.00	Included with 5 year warranty
YEAR 5 PREVENTIVE TERMINAL MAINTENANCE	608	\$0.00	\$0.00	Included with 5 year warranty
YEAR 6 TERMINAL MAINTENANCE AND DEPOT REPAIR	608	\$162.00	\$98,496.00	
YEAR 7 TERMINAL MAINTENANCE AND DEPOT REPAIR	608	\$162.00	\$98,496.00	
YEAR 8 TERMINAL MAINTENANCE AND DEPOT REPAIR	608	\$162.00	\$98,496.00	
YEAR 9 TERMINAL MAINTENANCE AND DEPOT REPAIR	608	\$162.00	\$98,496.00	
YEAR 10 TERMINAL MAINTENANCE AND DEPOT REPAIR	608	\$162.00	\$98,496.00	
System Subtotal			\$492,480.00	
Maintenance Total			\$492,480.00	

Immediate & Future Discounts

Description		Discount %	
First Five Years - Pricing Per RFP Pricing Pages			
Purchase Price Discount Years 6 - 10		25%	
Subscriber Equipment-L3Harris		25%	
Accessories-L3Harris		25%	
L3Harris Spare Parts		25%	

Financing

Description			
3-years 1.55%.34372			
5-years 1.61%.20976			
7-years 1.73%.15291			



Exhibit 1

City of Greenville Pricing Pages

Fire Dept - Remote Mount Mobiles

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M XL-185M Mobile 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Universal XL-Mobile Mounting Kit Think Mount Low Loss Coax Standard XL Microphone External Speaker with Cable XL-CH Control Unit	24	\$8,487.03	\$6,265.28	\$150,366.72
Subtotal Equipment				\$150,366.72

Negotiation Notes

Removed 3DB whip antenna to be replaced with 3DB Laird antenna priced in added items below.

Fire Dept - Remote Mount Dual Control Mobiles

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M Dual Controls XL-185M Mobile 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Universal XL-Mobile Mounting Kit 3DB Antenna with Thick Mount Low Loss Coax Antenna,Base,Stnd Roof Mnt Low Loss GPS (2) Standard XL Microphone (2) External Speaker with Cable (2) XL-CH Control Unit Bracket for Control Head Ethernet Cable Power Cable Speaker ACCY Cable	28	\$10,661.03	\$7,895.78	\$221,081.84
Subtotal Equipment				\$221,081.84

Remove 3DB Antenna with Thick Mount Low Loss Coax

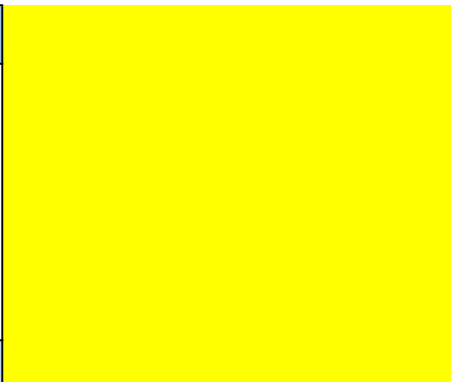
Add Antenna,Base,Stnd Roof Mnt Low Loss GPS
(+\$1,890.00)

Fire Dept - Control Stations (CS) w/ Battery Back up

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M Control Station XL-185M Mobile 700/800 Mhz P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Cabinet, XL Desktop w/ power/ethernet/assy cables Desktop Microphone XL-CH Control Unit Mounting Bracket for Control Head Single Key DES/AES Encryption	8	\$8,911.03	\$6,733.28	\$53,866.24
Subtotal Equipment				\$53,866.24

Police Dept - Remote Mount Mobiles

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M XL-185M Mobile 700/800 Mhz Encryption, 256-AES, 64-DES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Universal XL-Mobile Mounting Kit Standard Roof Mount Low Loss Standard XL Microphone External Speaker with Cable XL-CH Control Unit	175	\$9,077.01	\$6,782.76	\$1,186,983.00
Subtotal Equipment				\$1,186,983.00



Removed 3DB whip antenna to be replaced with 3DB Laird antenna priced in added items below.

Police Dept - Control Stations (CS) w/ Battery Back up

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185M Control Station XL-185M Mobile 700/800 Mhz P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Cabinet, XL Desktop w/ power/ethernet/assy cables Desktop Microphone XL-CH Control Unit Mounting Bracket for Control Head Encryption 256-AES, 64-DES	3	\$9,606.01	\$7,254.51	\$21,763.53
Subtotal Equipment				\$21,763.53

Fire Dept - Portables Firefighters

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
L3Harris XL-185P, PKP, BLK XL-185P Portable 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) (2) Li-Ion Battery (4800) Hazloc Radio C1D2 Antenna 1/2 wave whip (762-870 MHz) Speaker Mic REVO NC2 C1D2	100	\$5,515.04	\$3,773.79	\$377,379.00
Subtotal Equipment				\$377,379.00



Removed Leather Cases (-\$12,750.00)

Optional XL Fire Speaker Mic \$495.00 (XF-AE3J)
(\$445 ea. With \$50 trade in of REVO NC2 C1D2)

Fire Dept - Portables Admin

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	
L3Harris XL-185P, FKP, BLK XL-185P Portable 700/800 Mhz Single Key DES and AES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) (2) Li-Ion Battery (4800) Antenna 1/2 wave whip (762-870 MHz) Belt Clip Standard Speaker Mic	20	\$4,910.04	\$3,863.79	\$77,275.80	
Subtotal Equipment				\$77,275.80	

Fire Dept - Portables Chargers

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	
(40) Charger 1 Bay XL185P (20) Charger 6 Bay XL185P (6) Wall Mount Kits for 6 Bay XL185P (20) Charger VC4000 (20) Power Adapter Kit for VC4000				\$23,017.50	No Change
Subtotal Equipment				\$23,017.50	

Police Dept - Portables Admin

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	
L3Harris XL-185P, FKP, BLK XL-185P Portable 700/800 Mhz Encryption 256 - AES, 64 - DES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Li-Ion Battery (4800) Antenna 1/2 wave whip (762-870 MHz) CASE,LEATHER,PREMIUM,BELT LOOP,D-SWIVEL REVO NC2 C1D2 Speaker Mic Charger 1 Bay XL185P	10	\$5,880.02	\$4,460.02	\$44,600.20	Remove Metal Belt Clip Add CASE,LEATHER,PREMIUM, BELT LOOP,D-SWIVEL (+862.50) Replaced Standard Spkr/Mic with REVO NC2
Subtotal Equipment				\$44,600.20	

Police Dept - Portables Officers

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost	
L3Harris XL-185P, PKP, BLK XL-185P Portable 700/800 Mhz Encryption 256 - AES, 64 - DES P25 Trunking Phase 1 & Phase 2 Over the Air Programming (OTAP) Li-Ion Battery (4800) Antenna 1/2 wave whip (762-870 MHz) Belt Clip Speaker Mic, REVO NC2 C1D2 Charger 1 Bay XL185P	240	\$5,570.02	\$4,227.52	\$1,014,604.80	Remove Standard Speaker Mic Add REVO NC2 Speaker Mic (-\$900.00)
Subtotal Equipment				\$1,014,604.80	

Police Dept - Additional

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
(250) Microphone, Palm 2 Wire, Blk (50) Antenna 1/2 Wave 762-870 MHz (250) Spare Li-Ion Hi-Cap Batteries (10) 6 Bay Chargers for XL-185P (10) Wall Mount Kits for 6 Bay (50) VC4000 Chargers (50) Power Adapters for VC4000				\$91,950.00
Subtotal Equipment				\$91,950.00

Removed 1/4 wave antennas; replaced with 1/2 antennas (Spares)

Programming Equipment

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
(4) USB Programming Cables (4) RPM/RPM 2 with annual updates (NO DONGLE) (4) USB Type A to Type C Programming Cable (4) Dell Latitude Laptop Computers (1) SW, Dist Kit, Profile Manager (1) USB Data Cable				\$20,608.62
Subtotal Equipment				\$20,608.62

No Change

Device Manager - Cloud Based Applications

Equipment Description	Number Req'd	List Unit Cost	Unit Cost	Extended Cost
Subtotal Equipment				\$0.00

Additional Items Requested in Negotiations				\$35,342.68	Items added after final negotiation review Specify final configuration at time of order
KYDEX Z9 Holster (w/ D-Ring or Belt Loops)	100		\$39.95	\$3,995.00	
Leather Strap for Holster (PN-CC14524-001)	100		\$45.00	\$4,500.00	
Havis Console Upper Trim (PN-CEB30HXLIP)	227		\$30.28	\$6,873.56	
Havis Console Lower Trim (PN-CFP)	227		\$11.56	\$2,624.12	
Dongles for Tactical headsets (estimated)	20		\$150.00	\$3,000.00	
Tactical headset (Liberater 2 Helmet)	3		\$1,000.00	\$3,000.00	
Laird antenna (ETRAB8063)	227		\$50.00	\$11,350.00	
Training/ATP/PMP				\$37,171.80	
Train the Trainer Subscription/RPM (10 students)					
Acceptance Testing per agreed ATP					
On-site PM during project implementation					
Terminal Services				\$59,348.27	
Develope profiles					
Program mobiles/portables/control stations					
Operational testing					
Installation Services				\$196,995.30	
Install rear mount mobiles					
Install dual control mobiles					
Decommission existing mobiles					
Control station parts antenna systems					
Install control stations					
2 hour battery back up system (UPS) x 11	11	\$481.50	\$5,296.50	\$5,296.52	
BID Bond				\$46,142.23	
Bond per RFP requirements					
Total for Equipment and Services				\$3,663,794.05	
Special Quantity Discount				-\$366,379.41	
RFP Price for Equipment and Services				\$3,297,414.65	

Terminal Maintenance

Description	Number Req'd		Unit Cost	Extended Cost
YEAR 1 PREVENTIVE TERMINAL MAINTENANCE	608		\$0.00	\$0.00
YEAR 2 PREVENTIVE TERMINAL MAINTENANCE	608		\$0.00	\$0.00
YEAR 3 PREVENTIVE TERMINAL MAINTENANCE	608		\$0.00	\$0.00
YEAR 4 PREVENTIVE TERMINAL MAINTENANCE	608		\$0.00	\$0.00
YEAR 5 PREVENTIVE TERMINAL MAINTENANCE	608		\$0.00	\$0.00
YEAR 6 TERMINAL MAINTENANCE AND DEPOT REPAIR	608		\$162.00	\$98,496.00
YEAR 7 TERMINAL MAINTENANCE AND DEPOT REPAIR	608		\$162.00	\$98,496.00
YEAR 8 TERMINAL MAINTENANCE AND DEPOT REPAIR	608		\$162.00	\$98,496.00
YEAR 9 TERMINAL MAINTENANCE AND DEPOT REPAIR	608		\$162.00	\$98,496.00
YEAR 10 TERMINAL MAINTENANCE AND DEPOT REPAIR	608		\$162.00	\$98,496.00
System Subtotal				\$492,480.00
Maintenance Total				\$492,480.00

Included with 5 year warranty
 Included with 5 year warranty
 Included with 5 year warranty
 Included with 5 year warranty
 Included with 5 year warranty

Immediate & Future Discounts

Description				
First Five years - Pricing Per RFP Pricing Pages				
Purchase Price Discount Years 6 - 10		Discount %		
Subscriber Equipment-L3Harris		25%		
Accessories-L3Harris		25%		
L3Harris Spare Parts		25%		

Financing

Description				
3-years 1.55% .34372				
5-years 1.61% .20976				
7-years 1.73% .15291				

PURCHASE CONTRACT

This contract is dated, made, and entered into this ____ day of _____, 20 ____ between the City of Greenville , a N.C. municipal corporation (the "City" or "Client") and Communications International, Inc. (corporation) ("Seller," "Vendor," and "Contractor").

- I. This contract is for supply and delivery of equipment described in Exhibit 5 entitled "City of Greenville Pricing Pages", for use by the City, including the City Fire and Rescue Department and City Police Department. In addition, this contract is for the service and maintenance of the above referenced equipment which shall be under warranty as provided herein.
- II. Seller is a (*check one*): corporation; limited liability company; limited partnership; general partnership; proprietorship.
- III. If Seller is a corporation, limited liability company, or limited partnership, Seller is organized under the laws of the State of Georgia.

IT IS AGREED:

1. Seller, in consideration of the sums to be paid as provided in this contract, including in accordance with section 3 below, agrees to sell to the City, the goods described in the following exhibits. In addition, Seller shall provide the associated services to the goods described in the exhibits and made a part of this contract.

In response, the City agrees to purchase, at the times and prices, and in the quantities and qualities, the goods described in the following exhibits, which are made a part of this contract.

<input checked="" type="checkbox"/> Request for Proposal, RFP #20-21-35 issued April 30, 2021, 59 pages; Exhibit _1	<input checked="" type="checkbox"/> Responder's Response to request for proposal, Technical Requirements, Exhibit 2	<input checked="" type="checkbox"/> Responder's Response to request for proposal, Pricing Exhibit 3
<input type="checkbox"/> Standard Contract Terms below; Exhibit 4	<input type="checkbox"/> Final Pricing Sheet, Exhibit 5	

2. In the files of the City's Financial Services, this contract is associated with RFP #20-21-35. The City's contact is Ms. Denisha Harris, Financial Services, or Fire Marshall Bryant Beddard, Fire Department, City of Greenville, 201 West 5th Street, Greenville, NC 27858 Email: dharris@greenvillenc.gov or bbeddard@greenvillenc.gov

3. The City shall make payment in the amount required by this contract after Seller's satisfactory completion of performance, in accordance with billing and payment clauses. The sum to be paid under this contract is \$3,297,414.65.

WHEREFORE, the City has caused this contract to be executed under authority of its City Council, and Seller (if corporate) has executed this contract under seal by authority of its board of directors; if not corporate, Seller has executed this contract under seal pursuant to proper authority.

CITY OF GREENVILLE

By: _____
P.J. Connelly, Mayor

ATTEST:

By: _____
_____, City Clerk

[Seal]

**NORTH CAROLINA
PITT COUNTY**

I _____, a Notary Public in and for the aforesaid County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that she is Clerk of CITY OF GREENVILLE, a North Carolina municipal corporation, and that by authority duly given and as the act of the CITY OF GREENVILLE, the foregoing instrument was signed in its corporate name by its Mayor, sealed with its corporate seal, and attested by herself as Clerk.

Witness my hand and Notarial Seal, this the ___ day of _____, 20__.

My Commission expires: _____

Notary Public

(Official Seal)

Seller:
Communications International Inc.

By: _____ (Seal)
_____, officer

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that _____ personally appeared before me this day,
acknowledging to me that she signed the foregoing document for the purpose(s) stated therein, in the capacity
indicated therein:

Witness my hand and Notarial Seal, this the ____ day of _____, 20__.

My Commission expires: _____

Notary Public

Notary's printed or typed name

(Official Seal)

.....
The individuals executing this contract for Seller warrant that they have authority to execute this contract on behalf of
Seller.

Instructions for Completing Contract

1. Unless the City specifies otherwise, Seller must complete and sign this contract in duplicate originals and return it within the time period, if any, specified by the City in its request for Seller to sign, to the City’s Financial Services Department for execution by the City. After the City signs the contract, the City will return a copy signed by the City.
2. **Seller’s Status; Authorized Signers.** One of these subsections (a, b, or c) applies.
 - (a) **SELLER IS A CORPORATION.** If Seller is a **corporation** -(i)
The corporation agrees that it is signing the contract under seal.
 - (ii) The full correct corporate name must be used. If a corporate division is involved, the corporation (not the division) should execute the contract.

- (iii) This signature must be that of one of the following: (1) chairperson, president, chief executive officer, vice president, assistant vice-president, treasurer, chief financial officer, or (2) a person authorized by the board of directors to execute contracts in general or this particular contract.
- (iv) If someone other than chairperson, president, chief executive officer, vice-president, assistant vice-president, treasurer, chief financial officer signs, then you must attach a copy of the resolution of the board of directors authorizing the other person to sign the contract. That copy of the resolution must be certified by a corporate secretary, with the corporation's seal impressed on it. A resolution in the following form will comply with the requirements of this subpart "iv," although other forms may also be acceptable:

Resolution Authorizing Execution of Contracts	
<p>RESOLVED, that _____ (name of person authorized to sign) shall have authority to enter into contracts with the City of Greenville, N.C., in the name of and on behalf of Communications International, Inc. related to City of Greenville RFP #20-21-35.</p> <p>I, a Secretary or Assistant Secretary of the corporation whose name is stated above, certify that the foregoing is a true copy of a resolution duly adopted by the Board of Directors of the corporation, and that the resolution is still in effect.</p> <p>This the _____ day of _____, 20____. _____</p> <p>(Affix corporate seal) Secretary of Assistant Secretary</p>	

(b) SELLER IS A LIMITED LIABILITY COMPANY. If Seller is a **limited liability company**, a manager is the standard person to sign. If the LLC's "operating agreement" specifically says that someone else may sign contracts, and that other person is signing this contract, please provide a copy of the following from the operating agreement: pages 1, 2, and signature pages; and the page containing the appointment of the person who is signing other than the LLC's manager. Please mark the text that makes that appointment.

(c) SELLER IS AN INDIVIDUAL OR PARTNERSHIP. If Seller is an **individual**, including an individual doing business under a business name, the individual owner must sign. If Seller is a **partnership**, a general partner must sign.

3. Summary of Goods and Services. The description in section I (which begins "This contract is for...") on the front of this document is only a summary and is intended only for general reference. The details of the purchase are described elsewhere and control over this summary.

Standard Contract Terms.

If the bidder is awarded the contract, the bidder and the City will sign the **City's Purchase Contract**, which includes Standard Contract Terms below (and other contract terms set forth in RFP #20-21-35).

STANDARD CONTRACT TERMS- Exhibit 4

Sec. 1. RFP means Request for Proposal #20-21-35 and/or RFP #20-21-35 which is a part of this contract.

Sec. 2. Definition of "Work"; Presumption that Duty is Seller's. In this contract, "Work" means the services that Seller is required to perform pursuant to this contract and all of Seller's duties to the City that arise out of this contract, including the duty to supply goods. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of Seller.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, Seller shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Seller's Billings to City. Compensation. Seller shall comply with the City's directions regarding sending invoices to the City for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. As provided in the RFP (2.3), within thirty days after the City receives an invoice, the City shall send Seller a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Reserved.

Sec. 7. Insurance. See RFP (2.16; 1.8-1.11, pg. 56-59).

Sec. 8. Performance of Work by City. If Seller fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies, including but not limited to **RFP (4.15)**. Before doing so, the City shall give Seller notice of its intention. Seller shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Reserved.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City: This information is on the Purchase Contract.

To Seller: The Bidder's mailing address and other information from the Bidder Information Form will be used.

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs. If the notice is undeliverable because the information given to the City under this section is incorrect, incomplete, or out of date, the notice will be deemed given and sent on the date that the City attempted to deliver by fax, or the date the City placed the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested.

Sec. 11.1 Indemnification I. (a) To the maximum extent allowed by law, Seller shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of Seller or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," Seller shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding Seller. (c) Other Provisions Separate. Nothing in

this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of Seller under this contract. (e) Limitations of Seller's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require Seller to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 11.2. Warranties and Indemnification II. In addition to other warranties made in this transaction, Seller represents and warrants that all of the products (which includes goods, items, and other things) furnished under this contract, the process by which those products are made, and their use will not infringe any patent, trademark, or other rights of any other person, firm, or corporation, and Seller shall defend, indemnify, and hold harmless the City and its officers, officials, agents, contractors, and employees from and against any and all claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (including interest and reasonable attorney's fees assessed as part of any such item) arising out of any (i) actual or alleged infringement of any such patent, trademark, or other rights, or (ii) (except to the extent that the personal injury, death, or property damage is caused solely by negligent or intentional acts or omissions of the City) personal injury, death, or property damage allegedly caused by or resulting from the delivery to the City of, or the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product furnished to the City under this contract. Without reducing the City's rights under this section, Seller, in case of an actual or threatened claim, may at Seller's option and expense procure for the City the right to continue using the products furnished under this contract. (However, the preceding sentence does not pertain to part "(ii)" of the first sentence of this section.) In addition to other warranties made in this transaction, Seller warrants that all of the products (which includes goods, items, and other things) furnished under this contract must be in conformity with applicable NC and federal statutes and regulations; except to the extent other contract documents provide otherwise, not have been used; and must be at least such as (a) pass without objection in the trade under the contract description; (b) in the case of fungible goods, are of fair average quality within the description; (c) are fit for the ordinary purposes for which such goods are used; (d) run, within the variations permitted by the contract, of even kind, quality and quantity within each unit and among all units involved; (e) are adequately contained, packaged, and labeled as the contract may require; and (f) conform to the promises or affirmations of fact made on the container or label if any.

Sec. 12. Termination for Convenience ("TFC"). See RFP (1.5, pg. 55 of 59).

Sec. 13. State Law Provisions.

(a) E-Verify Requirements. See RFP (2.6).

(b) Iran Divestment Act Certification. See RFP (2.17).

Sec. 14. Miscellaneous

(a) Choice of Law and Forum; Service of Process. See RFP (1.6, pg. 56 of 59).

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, Seller shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, Seller and all assignees shall be subject to all of the City's defenses and shall be liable for all of Seller's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting Seller the right to assign, it is agreed that the duties of Seller that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, Seller shall comply with all applicable law.

(g) No Third Party Rights Created. This contract is intended for the benefit of the City and Seller and not any other person.

(h) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to the Purchase Contract; the Purchase Contract includes these Standard Contract Terms and other documents incorporated into the Purchase Contract. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2 of these Standard Contract Terms. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(i) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(j) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or Seller's services under this contract, that power may be exercised by City Manager without City Council action.

APPROVED AS TO FORM:

BY: _____
Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Byron Hayes, Director of Financial Services Date _____

Account Number:

Project Code (If Applicable):



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Contract award to Muter Construction for the construction of Fire/Rescue Station 7 at 4170 Bayswater Road

Explanation: In 2007, the City of Greenville identified a need for a new Fire/Rescue Station in the southeast area of the city. At the completion of a Fire Station Location Analysis, the area more suitable for a fire/rescue station was determined to be in the Firetower Road area near Bayswater Road. In 2017, a Fire/Rescue Station Design Committee was created to evaluate the opportunities to proceed with the design and development of a new fire/rescue station at 4170 Bayswater Road. In 2019, a Request for Qualifications for an architectural firm with fire/rescue station design experience was advertised. Stewart-Cooper-Newell Architects was selected to design Fire/Rescue Station 7. The new station was designed to meet the current and future fire/rescue demands for this growing portion of the city. The new station will have three bays, large enough to accommodate any truck within the Fire/Rescue fleet, as well as seven bedrooms for personnel. The station will also have a variety of built-in training props to allow training at the station without traveling out of the district. There will also be a 25 person training and meeting room that will provide additional meeting space for the City. The construction bid package was advertised and three bids were received on July 22, 2021. The lowest responsible bidder was Muter Construction, with a bid of \$5,594,803.

Fiscal Note: The lowest responsible bid of \$5,594,803 with Muter Construction is proposed to be financed as part of a larger installment financing package that will include various other priority capital projects. The financing will be funded with recurring General Fund appropriations that are included within the Council Adopted Fiscal Year 2021-22 General Fund Budget.

Recommendation: Staff recommends City Council award the Fire/Rescue Station 7 construction contract to Muter Construction in the amount of \$5,594,803 for FY 2021-22.

ATTACHMENTS

 [COG-1151029-v1-Owner_GC_Contract-reduced.pdf](#)



AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Fourth (4th) day of August in the year Two Thousand Twenty-One (2021)
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Greenville
1500 Beatty Street
Greenville, North Carolina 27834

and the Contractor:
(Name, legal status, address and other information)

MuterConstruction
111 East Vance Street
Zebulon, North Carolina 27597
919-404-8330

for the following Project:
(Name, location and detailed description)

Greenville Fire Station No. 7 / Dispatch Center

New Fire Station No.7 to be located on a 6.01 acre Parcel Number 82543
4170 Bayswater Road, Winterville NC

The Architect:
(Name, legal status, address and other information)

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054
Telephone Number: (704) 865-6311
Fax Number: (704) 865-0046

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(3B9ADA48)

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

Notice to Proceed/Commence Date:
(upon date of issuance of Notice to Proceed by Owner
Completion Date:

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

Init.

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User Notes:

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

Not later than Three Hundred Sixty-Five (365) calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Five Million, Five Hundred Ninety-Six Thousand, One Hundred Fifty-Four Dollars (\$ 5,596,154.00), subject to additions and deductions as provided in the Contract Documents.

Base Bid	\$4,786,000.00
Contingency Building Allowance	\$300,000.00
Contingency Site Allowance	\$150,000.00
Security (site & building) Allowance	\$ 50,000.00
Plymovent Allowance	\$ 80,000.00
Signage Allowance (Interior signage and directories)	\$ 25,000.00
IT and Communications Allowance	\$ 50,000.00
Site Lighting Allowance	\$ 40,000.00
Unit Price #1 Allowance: 10 cy x Unit Price #1	\$ 4,500.00
Unit Price #2 Allowance: 10 cy x Unit Price #2	\$ 4,250.00
Unit Price #3 Allowance: 500 cy x Unit Price #3	\$ 4,000.00
Unit Price #4 Allowance: 2500 cy x Unit Price #4	\$ 30,000.00
Unit Price #5 Allowance: 500 cy x Unit Price #5	\$ 4,000.00
Unit Price #6 Allowance: 1750 cy x Unit Price #6	\$ 29,478.00
Unit Price #7 Allowance: 250 cy x Unit Price #7	\$ 11,000.00
Unit Price #8 Allowance: 500 cy x Unit Price #8	\$ 21,075.00
Unit Price #9 Allowance: 1000 sy x Unit Price #9	\$ 1,000.00
Unit Price #10 Allowance: 2000 sy x Unit Price #10	\$ 3,000.00
Unit Price #11 Allowance: 500 sy x Unit Price #11	\$ 1,500.00
TOTAL BASE BID (Includes Base Bid and All Allowances)	\$5,594,803.00
Alternate B: See Description in Article 4.2.1	\$ 1,351.00
TOTAL BID (Includes Base Bid, All Allowances, and Alternate B)	\$5,596,154.00

Init.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
B: State Change in Base Bid Sum to provide all General Construction work to provide (3) full glass aluminum overhead doors with solid panel row at the bottom at all rear apparatus bay door locations in lieu of overhead apparatus bay door (door type J) as shown on construction documents and specs, reference sheet 4.11 and 4.70.	\$1,351.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
SEE ARTICLE 4.1	

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
SEE ARTICLE 4.1		

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

If the Contractor fails to achieve Substantial Completion within the contract time, the Contractor shall be liable for the sum of Five Hundred Dollars (\$500.00) as Liquidated Damages, and not as a penalty, for each calendar day beginning on the first day after the Contractor fails to achieve Substantial Completion within the Contract Time until the date that Substantial Completion is achieved such Liquidated Damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the work

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Until the Work is fifty percent (50%) complete, the Owner may withhold five percent (5%) of the amount due from the contractor on account of progress payments. When the project is fifty percent (50%) complete, the owner, with written consent of the surety, shall not retain any further retainage from periodic payments due the contractor if the contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the architect, engineer, or owner has been corrected by the contractor and accepted by the architect, engineer, or owner. If the owner determines the contractor's performance is unsatisfactory, the owner may reinstate retainage for each subsequent periodic payment application up to the maximum amount of five percent (5%). The project shall be deemed fifty percent (50%) complete when the contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the contractor's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

10% per annum

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

Per Article 14.4.3 of AIA Document A201-2017.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

City of Greenville
500 South Greene Street
Greenville, North Carolina 27834
252-329-4420
P. J. Connelly

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

Muter Construction
111 East Vance Street
Zebulon, North Carolina 27597
919-404-8330
Damon Jones

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§ 8.4

The Contractor (successful bidder) shall **submit the name, references and resume of the proposed project manager to the Owner (specifically City Manager or Manager’s designee) and Architect for approval.** And upon receipt of written approval (e-mail or letter) of both the Owner and Architect, the Contractor shall authorize project manager to carry out the Work and provide the services as provided in this contract. Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
See Attached Exhibit B	Index of Drawings	

.6 Specifications

Section	Title	Date	Pages
See Attached Exhibit C	Specifications Table of Contents		

.7 Addenda, if any:

Number	Title	Pages
See Attached Exhibit D	Addenda Listing	

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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplements to AIA Document A-201-2017		09/18	SGC2917-1

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

*SEE ATTACHMENTS BELOW

This Agreement entered into as of the day and year first written above.

City of Greenville

Muter Construction

OWNER (Signature)

CONTRACTOR (Signature)

P. J. Connelly, Mayor

(Printed name and title)

(Printed name and title)

Attachments*:

- AIA Document A101-2017 Exhibit A
- AIA Document A201-2017 General Conditions
- Supplements to AIA Document A-201-2017
- Exhibit “B” – Index of Drawings
- Exhibit “C” – Specifications Table of Contents
- Exhibit “D” – Addenda Listing
- Muter Construction Original Bid Proposal dated July 22, 2021

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Document A101[®] – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Seventeenth day of December in the year Two Thousand Nineteen *(In words, indicate day, month and year.)*

for the following **PROJECT**:
(Name and location or address)

Greenville Fire Station No. 7 / Dispatch Center

THE OWNER:
(Name, legal status and address)

City of Greenville
500 South Greene Street
Greenville, North Carolina 27834

THE CONTRACTOR:
(Name, legal status and address)

TABLE OF ARTICLES

A.1 GENERAL

A.2 OWNER'S INSURANCE

A.3 CONTRACTOR'S INSURANCE AND BONDS

A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201[®]-2017, General Conditions of the Contract for Construction. Article 11 of A201[®]-2017 contains additional insurance provisions.

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§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

(Paragraph Deleted)

(Table Deleted)

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

(Paragraph Deleted)

(Table Deleted)

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

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The Owner shall purchase and maintain the insurance selected and described below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

(Paragraphs Deleted)

- § A.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

(Paragraphs Deleted)

- § A.2.5.2 **Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
Systems Breakdown including hot testing	

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.1.4 The Insurance Companies furnishing the policies for all of the above coverages will be required to furnish a waiver of its rights of subrogation against the Owner, the Architect, the Architect's Employees and the Architect's Consultants.

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§ A.3.1.5 The Insurance Policies and Waivers must be furnished to the Architect prior to the beginning of construction.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than:

Five Million Dollars (\$ 5,000,000.00) each occurrence, Six Million Dollars (\$ 6,000,000.00) general aggregate, and Six Million Dollars (\$ 6,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including:

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than Five Million Dollars (\$ 5,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required

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under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than: Four Million Dollars (\$ 4,000,000.00) each accident, Four Million Dollars (\$ 4,000,000.00) each employee, and Four Million Dollars (\$ 4,000,000.00) policy limit.

(Paragraph Deleted)

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than: One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than: One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than: One Million Dollars (\$ 1,000,000.00) per claim and

(Paragraph Deleted)

Three Million Dollars (\$ 3,000,000.00) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1. N/A

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[N/A] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with

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the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- [N/A] § A.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.
- [N/A] § A.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [N/A] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.
- [N/A] § A.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.
- [N/A] § A.3.3.2.6 **Other Insurance**
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

(Table Deleted)

§ A.3.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor’s usual source and the cost thereof shall be included in the Contract sum. The amount of each bond shall be equal to 100% of the Contract Sum.

§ A.3.4.2 The Contractor shall deliver the required bonds to the Architect not later than three days following the date the Agreement is entered into, or if the work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Architect that such bonds will be furnished.

§ A.3.4.3 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

§ A.3.4.4 Bonds shall be executed on AIA Standard Form A-312, Performance Bond and Materials Payment Bond, with amount shown on each part of bond equal to 100% of the total amount, payable by terms of the Contract. Surety shall be a company licensed to do business in the State where the project is located and shall be acceptable to the Owner.

§ A.3.4.5 Bonds shall be dated the same as, or subsequent to, the Contract and shall be accompanied by a current Power of Attorney. Bond shall be furnished in sufficient number of copies so that one copy can be bond with each copy of the Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Greenville Fire Station No. 7 / Dispatch Center
4170 Bayswater Road
Winterville NC

THE OWNER:

(Name, legal status and address)

City of Greenville
500 South Greene Street
Greenville, North Carolina 27834

THE ARCHITECT:

(Name, legal status and address)

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054

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12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

SUPPLEMENTS TO A.I.A. DOCUMENT A-201-2017
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

GENERAL:

The following supplements modify, change, delete from or add to the "General Conditions Of The Contract For Construction," AIA Document A201-2017. Where any Article of the General Conditions is modified or any paragraph, subparagraph, or clause thereof is modified or deleted by these supplements, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 4 - ARCHITECT

- 4.2 **ADMINISTRATION OF THE CONTRACT:** Supplement as follows:
- 4.2.9.1 The Architect shall provide one final inspection after the Contractor notifies the Architect that the project is complete.
- 4.2.9.2 The Architect shall, upon final inspection, prepare a written list of items to be completed and promptly provide the list to the Contractor.
- 4.2.9.3 The Contractor shall be required to complete the project and the items on the list in **30** days and provide all required closeout documents within **60** days of the final inspection.
- 4.2.9.4 The Architect shall provide one (1) re-inspection to verify that the Contractor has completed the project and the final inspection list. The Owner and the Contractor shall be promptly notified of any deficiencies noted during this inspection. The Contractor shall immediately make the necessary corrections.
- 4.2.9.5 Any additional re-inspections necessitated due to the deficiencies being noted under 4.2.9.4 above and any additional time required by the Architect, due to closeout documents being incomplete or Contractor not submitting the documents within **60** days of the final inspection, will be billed to the Owner by the Architect as per the Owner/Architect agreement.
- 4.2.9.6 The Owner shall have the right to deduct the charges of the Architect incurred under Section 4.2.9.5 from the Contractor's last application for payment.

ARTICLE 15 – CLAIMS AND DISPUTES

- 15.1.6 **CLAIMS FOR ADDITIONAL TIME:** Supplement as follows:
- 15.1.6.3 Add the following Subparagraph 15.1.6.3 to Subparagraph 15.1.6:
Time Extensions will not be granted for rain, wind, snow or other natural phenomena of **normal intensity** for the locality where work is performed. For purpose of determining extent of delay attributable to unusable weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the

locality where work is performed and on daily weather logs kept on the job site by the Contractor reflecting the effect of the weather on progress of the work and initialed by the Architect's representative. Time extensions for weather delays do not entitle the Contractor to "extended overhead" recovery.

- 15.1.6.4 Add the following Subparagraph 15.1.6.4 to Subparagraph 15.1.6
If the Contractor is delayed at any time in the progress of his work by any act or negligence of the Owner or the Architect, or by any employee of either; by any separate Contractor employed by the Owner; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the Contractor's control; or by any other causes which the Architect and Owner determine may justify the delay, then the contract time may be extended by change order for the time which the Architect and Owner may determine is reasonable.
- 15.1.6.5 Add the following Subparagraph 15.1.6.5 to Subparagraph 15.1.6
No claim shall be allowed on account of failure of the Architect to furnish drawings or instructions until twenty-one (21) days after demand for such drawings and/or instructions.
- 15.1.6.6 Add the following Subparagraph 15.1.6.6 to Subparagraph 15.1.6
Claims for additional time and additional cost will not be allowed if the actual construction time does not exceed the actual completion time as stated in the original Owner-Contractor Agreement.

CITY OF GREENVILLE NEW FIRE/RESCUE NO. 7

ARCHITECT PROJECT #1658

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CITY OF GREENVILLE NEW FIRE/RESCUE NO. 7
ARCHITECT PROJECT #1658

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The City of Greenville, NC
Fire Rescue No. 7
4176 Bayswater Road, Winterville, NC 28590
Waxhaw, NC 28173

ARCHITECTS PROJECT #1658

ADDENDA LISTING – EXHIBIT "D"

Addendum #1 **Dated 7/16/2021** **Pages 1 - 42**

ATTACHMENTS:

1. Pre Bid Conference Attendees Sign In Sheet (1) - 8 ½" x 11" page
2. Revised Bid Form (5) - 8 ½" x 11" pages total – Must use this form
3. AIA Document A305-2020 – Contractor’s Qualifications Statement Sample – (1) - 8 ½" x 11" page
4. Spec Section 012100 – Allowances – (3) - 8 ½" x 11" page
5. Spec Section 012300 – Alternates – (1) - 8 ½" x 11" page
6. Spec Section 123213 – Manufactured Wood Casework – (7) - 8 ½" x 11" page
7. Architectural Bulletin Drawings ABD-1 thru ABD-7 – 8 ½" x 11" (7 pages total)
8. Revised Structural Sheets – 24" x 36" (11 pages total)

Addendum #2 **Dated 7/20/2021** **Pages 1 - 9**

ATTACHMENTS:

1. Architectural Bulletin Drawings ABD-8 thru ABD-12 – 8 ½" x 11" (5 pages total)
2. Structural Bulletin Drawings ABD-1 – (1) 8 ½" x 11" page

BID FORM
SINGLE PRIME CONTRACT

ALL WORK SHALL BE UNDER THE GENERAL CONTRACT
(WHICH WILL INCLUDE GENERAL, PLUMBING, MECHANICAL, & ELECTRICAL
IN ONE PRIME CONTRACT)

NAME OF BIDDER _____ Muter Construction _____

BIDDER'S ADDRESS _____ 111 E. Vance Street _____

Zebulon, NC 27597 _____
BIDDER'S PHONE NO. _____ 919-404-8330 _____ FAX NO. _____
BIDDER'S LICENSE NO. _____ 73095 _____
CONTACT _____ Damon Jones _____
TYPE OF WORK _____ Single Prime _____

City of Greenville – Fire / Rescue
Purchasing Bid Number 20-21-42
1500 Beatty Street
Greenville, NC 27834

ATTN: Eric Griffin, Fire / Rescue Chief

The undersigned having carefully examined the Bidding Documents, Drawings, Specifications, and all subsequent addenda as prepared by the Architects, Stewart-Cooper-Newell Architects, P.A., visited the site and being familiar with all conditions and requirements of the work, hereby agrees to furnish all labor and materials, equipment, services, etc., including all Allowances to complete the construction of:

A New City Greenville Fire / Rescue #7 Station
4170 Bayswater Road, Winterville, NC 28590

All to be in accordance with these documents for the following amounts.

(IMPORTANT NOTES!)

- A) The Contract will be awarded based on the **Low Total Bid** for the entire project which will include the Base Bid, Contingency Allowance, Specific Item Allowances, plus all Owner accepted Alternates.
- B) The Owner reserves the right to accept or reject any or all of the Bids and to waive informalities and minor irregularities in Bids received.
- C) The Owner reserves the right to accept or reject any portion of the Low Bid (which includes the Base Bid, Contingency Allowance, Specific Item Allowances and Alternates) or to make and/or negotiate changes to any portion of the work in order to meet the Budget Requirements of the Owners.
- D) The Bid shall contain Federal, State and Local taxes in accordance with the supplementary conditions. Sales Tax breakdown reports shall be submitted to the Architect by the Contractor with each month's application for payment.

BIDDERS NAME: Muter Construction

GENERAL CONSTRUCTION
(Includes Plumbing, Mechanical & Electrical)

Base Bid \$ 4,786,000 Dollars

ALLOWANCES: (FOR A COMPLETE DESCRIPTION OF ALLOWANCES, SEE SECTION 012100).

Contingency Building Allowance:	\$ <u>300,000</u>	Dollars
Contingency Site Allowance	\$ <u>150,000</u>	Dollars
Security (site & building) Allowance	\$ <u>50,000</u>	Dollars
Plymovent Allowance	\$ <u>80,000</u>	Dollars
Signage (Interior / Exterior) Allowance	\$ <u>25,000</u>	Dollars
IT and Communications Allowance	\$ <u>50,000</u>	Dollars
Site Lighting Allowance	\$ <u>40,000</u>	Dollars
Unit Price #1 Allowance: 10 cy x Unit Price #1:	\$ <u>4,500</u>	Dollars
Unit Price #2 Allowance: 10 cy x Unit Price #2:	\$ <u>4,250</u>	Dollars
Unit Price #3 Allowance: 500 cy x Unit Price #3:	\$ <u>4,000</u>	Dollars
Unit Price #4 Allowance: 2500 cy x Unit Price #4:	\$ <u>30,000</u>	Dollars
Unit Price #5 Allowance: 500 cy x Unit Price #5:	\$ <u>4,000</u>	Dollars
Unit Price #6 Allowance: 1750 cy x Unit Price #6:	\$ <u>29,478</u> <u>29487.50</u>	Dollars
Unit Price #7 Allowance: 250 cy x Unit Price #7:	\$ <u>11,000</u>	Dollars
Unit Price #8 Allowance: 500 cy x Unit Price #8:	\$ <u>21,075</u>	Dollars
Unit Price #9 Allowance: 1000 sy x Unit Price #9:	\$ <u>1,000</u>	Dollars
Unit Price #10 Allowance: 2000 sy x Unit Price #10:	\$ <u>3,000</u>	Dollars
Unit Price #11 Allowance: 500 sy x Unit Price #11:	\$ <u>1,500</u>	Dollars

difference of 2950

TOTAL BASE BID \$ 5,594,803 Dollars
(Includes Base Bid and All Allowances) 5,594,812.50

ALTERNATES: (FOR A COMPLETE DESCRIPTION OF ALTERNATES, SEE SECTION 012300).
 The undersigned further agrees to perform all work in the Alternates for the sums stated herein resulting in Additions or Deletions to the Base Bid. Additions or Deletions shall include any modifications of work or additional work that may reasonably be included as part of the Alternates.

ALTERNATES:

A: State Change in Base Bid Sum to provide all General Construction work to provide (3) bi-fold doors (door type K) at all rear apparatus bay door locations in lieu of overhead apparatus bay door (door type J) as shown on construction documents and specs, reference sheet 4.10, 4.11 and 4.70. Include the (6) interior bollards at the apparatus bay rear doors with this alternate, reference sheet 4.10 and bi-fold door specification.

\$ 126,189

B: State Change in Base Bid Sum to provide all General Construction work to provide (3) full glass aluminum overhead doors with solid panel row at the bottom at all rear apparatus bay door locations in lieu of overhead apparatus bay door (door type J) as shown on construction documents and specs, reference sheet 4.11 and 4.70.

\$ 1351

C: State Change in Base Bid Sum to provide all General Construction work to provide concrete additive MVRA, (see Concrete Spec 033000, Page 5, Section Paragraph 2.7-C) to all concrete floor slabs except the Apparatus Bay 146 & Mezzanine 200.

\$ 10,694

UNIT PRICES: Should the undersigned be required to perform work over and above that required by the Contract Documents, he will be paid an extra on the basis of unit prices stated herein. Prices stated shall be the sum total compensation payable for such items in place. See specification 012200 Unit Prices.

<u>Description</u>	<u>Unit of Measurement</u>
Unit Price #1: Mass Rock Removal – off-site disposal	\$ <u>450.00</u> per cubic yard 10
Unit Price #2: Trench Rock Removal – off-site disposal	\$ <u>425.00</u> per cubic yard 10
Unit Price #3: Unsuitable Soil Removal & Disposal - on-site	\$ <u>8.00</u> per cubic yard 500
Unit Price #4: Unsuitable Soil Removal & Disposal - off-site	\$ <u>12.00</u> per cubic yard 2500
Unit Price #5: On-site Suitable Soil Replacement	\$ <u>8.00</u> per cubic yard 500
Unit Price #6: Off-site Suitable Soil Replacement	\$ <u>16.85</u> per cubic yard 1750
Unit Price #7: ABC Replacement	\$ <u>44.00</u> per cubic yard 250
Unit Price #8: No.57 Washed Stone Replacement	\$ <u>42.15</u> per cubic yard 500
Unit Price #9: Woven Geo-Textile Stabilization Fabric in place	\$ <u>1.00</u> per square yard 1000
Unit Price #10: Non-Woven Geo-Textile Drainage Fabric in place	\$ <u>1.50</u> per square yard 2000
Unit Price #11: Biaxial Geo-Grid in place	\$ <u>3.00</u> per square yard 500

NOTE: The following information is for the Owner's use in guaranteeing that quality prime subcontractors (general, plumbing, mechanical & electrical) are used in connection with the project and is not intended as a solicitation for separate bids for subcontract work.

It is the intent of the City of Greenville to hire a single General Contractor who will in turn contract with and manage all sub-contractors. If the General Contractor listed as the bidder intends to hire and have another General Contractor perform any significant portion of the Work, partner, team, or otherwise work with or hire another General Contractor, that General Contractor shall be listed below. Failure to list additional General Contractor(s) may result in rejection of bid and forfeiture of bid deposit or bid bond.

PLUMBING CONTRACTOR:

Company Name THREATT INC
Company Address PO BOX 14000
City, State Zip _____
Phone No. _____
Fax No. _____
Contractor's Name _____
Contractor's License No. L-04730

PRICE: \$ 150,000

MECHANICAL CONTRACTOR:

Company Name ELO GREEN AIR
Company Address _____
City, State Zip _____
Phone No. _____
Fax No. _____
Contractor's Name _____
Contractor's License No. L 25274

PRICE: \$ 260,000

ELECTRICAL CONTRACTOR:

Company Name COASTLINE ELECTRIC
Company Address _____
City, State Zip _____
Phone No. _____
Fax No. _____
Contractor's Name _____
Contractor's License No. U-22032

PRICE: \$ 416,000

SITE CONTRACTOR:

Company Name MURPHY CONSTRUCTION
Company Address _____
City, State Zip _____
Phone No. _____
Fax No. _____
Contractor's Name _____
Contractor's License No. 73095

PRICE: \$ 750,000

BID GUARANTEE:

The undersigned further agrees to sign a contract for this work in the above amount, if offered, within **forty-five (45)** days after receipt of Bids, and to furnish surety as specified, and upon failure to do so, agrees to forfeit to the Owner, certified check \$ _____, or U.S. Money Order \$ _____, or Bid Bond \$ _____ Bid Bond _____.

PROPER LICENSES:

The undersigned certifies that he is properly licensed and classified to perform the work that he is bidding. This certification also guarantees that if subcontractors are used, they will also be properly licensed and classified.

TIME OF COMPLETION:

The undersigned further agrees to begin work promptly upon the issuance of the "Notice To Proceed" with an adequate force, carry the work forward as rapidly as possible and complete it within **365** consecutive calendar days.

ADDENDA RECEIVED AS FOLLOWS:

No. 1 Date 7-16-21 No. 2 Date 7-20-21 No. _____ Date _____

NAME OF BIDDER Damon Jones

BY  (Signature)

TITLE Vice President DATE BID EXECUTED 7-22-21

NOTE:

1. If Bidder is a corporation, write state of incorporation under the signature and if a partnership, give full names of all partners.
2. The Bid may be rejected if not accompanied by a guarantee in the specified amount. Any certified check may be held uncollectible at the risk of the Bidder submitting them.

LIQUIDATED DAMAGES - The Contractor is hereby notified that the Contract will contain a Liquidated Damages Clause.

Performance and Delivery Time:

The Contractor, shall begin work on or before the "commence work" date specified in the **NOTICE TO PROCEED** issued by the Owner, and as set forth in the plans, specifications, and proposal. All work shall be completed in all events on or before the date set forth in the NOTICE TO PROCEED.

A. Time is of the Essence.

It is agreed that time is of the essence; and as a result, unless prevented by strikes, accidents, or other causes beyond the Contractor's control, the Contractor shall deliver the materials and perform the services, as provided herein within the limits specified above. Failure of the Contractor to perform in the time specified above shall be deemed sufficient reason for default or the contract or forfeiture of the performance bond, or both.

B. Liquidated Damages.

Since actual damages for any delay in the completion of the work which the contractor is required to perform under this contract are or will be difficult to determine, the contractor and his sureties shall be liable for and shall pay to the Owner the sum of **\$500.00** as fixed and agreed as liquidated damages, and not as penalty, **for each calendar day of delay** from the date stipulated for completion, or as modified in accordance with the terms of this agreement until such work is satisfactorily completed and accepted. Said liquidated damages may be deducted from any payments owed to the contractor by the Owner or collected from the sureties whichever is deemed expedient by the Owner.

**City of Greenville/Greenville Utilities Commission
Minority and Women Business Enterprise (MWBE) Program**

**City of Greenville
Construction Guidelines and Affidavits
\$100,000 and above**

These instructions shall be included with each bid solicitation.

City of Greenville/Greenville Utilities Commission Minority and Women Business Enterprise Program

\$100,000 and Construction Guidelines for MWBE Participants

Policy Statement

It is the policy of the City of Greenville and Greenville Utilities Commission to provide minorities and women equal opportunity for participating in all aspects of the City’s and Utilities’ contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchases, and professional and personal service contracts.

Goals and Good Faith Efforts

Bidders responding to this solicitation shall comply with the MWBE program by making Good Faith Efforts to achieve the following aspiration goals for participation.

	CITY	
	MBE	WBE
Construction This goal includes Construction Manager at Risk.	10%	6%

Bidders shall submit MWBE information with their bids on the forms provided. This information will be subject to verification by the City prior to contract award. **As of July 1, 2009, contractors, subcontractors, suppliers, service providers, or MWBE members of joint ventures intended to satisfy City MWBE goals shall be certified by the NC Office of Historically Underutilized Businesses (NC HUB) only.** Firms qualifying as “WBE” for City’s goals must be designated as a “women-owned business” by the HUB Office. Firms qualifying as “MBE” for the City’s goals must be certified in one of the other categories (i.e.: Black, Hispanic, Asian American, American Indian, Disabled, or Socially and Economically Disadvantaged). Those firms who are certified as both a “WBE” and “MBE” may only satisfy the “MBE” requirement. **Each goal must be met separately. Exceeding one goal does not satisfy requirements for the other.** A complete database of NC HUB certified firms may be found at <http://www.doa.nc.gov/hub/>. An internal database of firms who have expressed interest to do business with the City and GUC is available at www.greenvillenc.gov. However, the HUB status of these firms must be verified by the HUB database. The City shall accept NCDOT certified firms on federally funded projects only. Please note: A contractor may utilize any firm desired. However, for participation purposes, all MWBE vendors who wish to do business as a minority or female must be certified by NC HUB.

The Bidder shall make good faith efforts to encourage participation of MWBEs prior to submission of bids in order to be considered as a responsive bidder. Bidders are cautioned that even though their submittal indicates they will meet the MWBE goal, they should document their good faith efforts and be prepared to submit this information, if requested.

The MWBE’s listed by the Contractor on the **Identification of Minority/Women Business Participation** which are determined by the City to be certified shall perform the work and supply the materials for which they are listed unless the Contractors receive prior authorization from the City to perform the work with other forces or to obtain materials from other sources. If a contractor is proposing to perform all elements of the work with his own forces, he must be prepared to document evidence satisfactory to the owner of similar government contracts where he has self-performed.

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid
The Contractor shall enter into and supply copies of fully executed subcontracts with each MWBE or supply signed Letter(s) of Intent to the Project Manager after award of contract and prior to Notice to Proceed. Any amendments to subcontracts shall be submitted to the Project Manager prior to execution.

Instructions

The Bidder shall provide with the bid the following documentation:

Identification of Minority/Women Business Participation
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)

Affidavit A (if subcontracting)

OR

Identification of Minority/Women Business Participation
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)

Affidavit B (if self-performing; will need to provide documentation of similar projects in scope, scale and cost)

Within 72 hours or 3 business days after notification of being the apparent low bidder who is subcontracting anything must provide the following information:

Affidavit C (if aspirational goals are met or are exceeded)

OR

Affidavit D (if aspirational goals are not met)

After award of contract and prior to issuance of notice to proceed:

Letter(s) of Intent or Executed Contracts

****With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to MWBE subcontractors.**

*****If a change is needed in MWBE Participation, submit a Request to Change MWBE Participation Form. Good Faith Efforts to substitute with another MWBE contractor must be demonstrated.**

Minimum Compliance Requirements:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the City for performance of contracts. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the City that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City whether to terminate the contract for breach or not. In determining whether a contractor has made Good Faith Efforts, the CITY will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.

MBForms 2002-
Revised July 2010
Updated 2019

BF/SPEC-7

Identification of Minority/Women Business Participation

I, Muter Construction
(Name of Bidder)

do hereby certify that on this project, we will use the following minority/women business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*MWBE Category
NONE		

*MWBE categories: Black, African American (B), Hispanic, Latino (L), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

If you will not be utilizing MWBE contractors, please certify by entering zero "0"

The total value of MBE business contracting will be (\$) 0.

The total value of WBE business contracting will be (\$) 0.

City of Greenville AFFIDAVIT A – Listing of Good Faith Efforts

County of Pitt

(Name of Bidder)

Affidavit of Muter Construction

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority/Women Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority/women business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 7-22-21 Name of Authorized Officer: Damon Jones

Signature: 

Title: Vice President



State of North Carolina, County of Wake

Subscribed and sworn to before me this 22nd day of July 20 21

Notary Public 

My commission expires 11-2-22

E-Verify Compliance Requirements

Provide with the bid.

Each bidder shall provide with its bid proposal written assurance that it does now and will throughout the duration of the project fully comply with the requirements of Article 2, Chapter 64 North Carolina General Statutes and that it will throughout the duration of the project maintain records of verification of legal work status for all employees including records of verification on terminated employees for one year following the termination of employment status.

Each bidder shall also provide written assurance that it will require and monitor compliance with Article 2, Chapter 64 for each subcontractor awarded portions of work on the project by bidder unless the subcontractor documents that it has fewer than 25 employees at the time the subcontract is awarded and throughout the duration of the subcontract.

All E-Verify records of the successful bidder and its subcontractors shall be available for inspection by the City of Greenville, NC or its designee at reasonable times and after reasonable notice throughout the duration of the project.

I, Damon Jones (print name), hereby state and declare that I am the Vice President (title of entity official) of Muter Construction (name of entity), and hereby certify to the City of Greenville, NC, that, as to any construction contract subsequently entered into with the City of Greenville, NC, that Muter Construction (name of entity) intends to comply with E-Verify requirements required under North Carolina General Statutes and as indicated above. Further, I declare that Muter Construction (name of entity) shall similarly require all subcontractors and/or material suppliers that contract with said entity for the contract be required to meet these same requirements.

Name of Authorized Officer: Damon Jones

Title: Vice President

Signature: 

Date: July 22, 2021

IRAN DIVESTMENT ACT CERTIFICATION
REQUIRED BY N.C.G.S. 147-86.59(a)

As of the date listed below, the vendor or bidders listed below is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58. The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed below to make the foregoing statement.

NOTE: N.C.G.S. 147-86.59(a) requires this certification for bids or contracts with the various governmental entities of North Carolina, including Counties. This certification is required when a bid is submitted, when a contract is entered into, and when a contract is renewed or assigned. No vendor may utilize any subcontractor found on the State Treasurer's Final Divestment List. The List is updated every 180 days, and can be found at www.nctreasurer.com/iran

VENDOR/BIDDER

Vendor Name Muter Construction

By  Title Vice President

Date 7-22-21

CITY OF GREENVILLE, NC

By _____

Date _____

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney

This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director / Financial Operations Manager

SCNA - BID BOND - 2011

(Important! AIA A-310 Bid Bond As Indicated In ATA-A701 Instructions To Bidders Is NOT Acceptable)

Date of Execution of this Bond: July 22, 2021

Name and Address of Principal (Bidder): Muter Construction, LLC

111 E Vance Street, Zebulon, NC 27597

Name and Address of Surety: Atlantic Specialty Insurance Company

Plymouth, MN 55441

Name and Address of Owner/Obligee: City of Greenville, North Carolina

Amount of Bond: Five Percent of Amount Bid

5%

Bid and Proposal Date: July 22, 2021 for Fire/Rescue

Station No. 7 Construction

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and the above named and SURETY above named, who is duly licensed to act as surety in the State of North Carolina, are held and firmly bound unto (Owner/Obligee) City of Greenville, North Carolina, a body corporate and politic of the State of North Carolina as Obligee, in the penal sum of FIVE PERCENT (5%) of the amount bid in the bid and proposal above described in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF OBLIGATION is such, that if the Principal shall be awarded the contract for which the bid and proposal above described is submitted and shall execute the contract, give bond for the faithful performance of the contract, and give bond for the payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, within ten (10) days after the award of the same to the Principal above named, then this obligation shall be null and void; but if the Principal above named fails to so execute such contract and give performance bond and payment bond as required by Section 129 of Chapter 143 of the General Statutes of North Carolina, as amended and Article 3 of Chapter 44-A of the General Statutes of North Carolina, as amended, the Surety shall, upon demand, forthwith pay to the Obligee the amount of this bond set forth above.

IN WITNESS WHEREOF, the Principal above named and the Surety above named have executed this instrument under their several seals on the date set forth.

WITNESS:

(Proprietorship or Partnership)

Muter Construction, LLC

Principal (name of individual, individual and trade name, partnership, corporation, or joint venture)

BY 

Title: Vice President
(Owner, Partner, Office held in corporation, joint venture)

ATTEST: (Corporation)

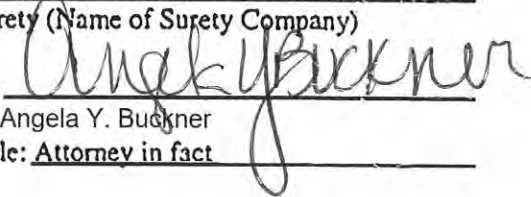
By: Beth Muter
Title: Corporate Secretary
(Corporate Secretary or Assistant Secretary Only)

WITNESS:

Jenny Snell
Jenny Snell



Atlantic Specialty Insurance Company
Surety (Name of Surety Company)

By 
Angela Y. Buckner
Title: Attorney in fact

(Corporate Seal of Surety)

5605 Carnegie Blvd., Suite 300, Charlotte, NC 28209

(Address of Attorney in Fact)

COUNTERSIGNED:


N.C. Licensed Resident Angela Y. Buckner

IMPORTANT- Surety Companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of North Carolina.

IF BOND IS EXECUTED BY ATTORNEY-IN-FACT
THEN THERE MUST BE ATTACHED TO THIS ACKNOWLEDGEMENT,
A CERTIFIED COPY OF THIS POWER-OF-ATTORNEY

ACKNOWLEDGEMENT FOR A SURETY COMPANY
OR OTHER CORPORATION

STATE OF North Carolina

COUNTY OF Mecklenburg

On this 22nd day of July, 2021

before me a Notary Public in and for said County and State personally appeared
Angela Y. Buckner to me personally known, who being by me duly sworn says that
he is the Attorney-in-Fact

of Atlantic Specialty Insurance Company

and that the seal affixed to the foregoing instrument in writing is the corporate seal of the company and
that said writing was signed and sealed by him in behalf of said corporation by its authority duly given by
its Board of Directors, and the said Angela Y. Buckner
as such Attorney-in-Fact

duly acknowledged said instrument to be the free act and deed of said corporation.


AFFIANT Angela Y. Buckner



SWORN TO BEFORE ME THIS 22nd DAY OF July, 2021


NOTARY PUBLIC Debra S. Ritter

MY COMMISSION EXPIRES THE 5th DAY OF October, 2024

DEBRA S. RITTER
Notary Public, North Carolina
Mecklenburg County
My Commission Expires
October 05, 2024

(AFFIX NOTARY SEAL)



Power of Attorney

Surety Bond No: Bid Bond

Principal: Muter Construction, LLC

Obligee: City of Greenville, North Carolina

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: Angela Y. Buckner, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **sixty million dollars (\$60,000,000)** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this fifth day of March, 2020.

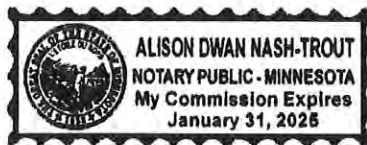
STATE OF MINNESOTA
HENNEPIN COUNTY



By

Paul J. Brehm, Senior Vice President

On this fifth day of March, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Notary Public

I, the undersigned, Assistant Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 22nd day of July, 2021.



Christopher V. Jerry, Secretary

AIA[®] Document A305[™] – 2020

Contractor's Qualification Statement

THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.

SUBMITTED BY:

(Organization name and address.)

Muter Construction
111 East Vance Street
Zebulon, NC 27597

SUBMITTED TO:

(Organization name and address.)

Stewart-Cooper-Newell Arch.
500 S. Green Street 27834
Greenville, NC

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TYPE OF WORK TYPICALLY PERFORMED

(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)

General Contracting, Construction Manager

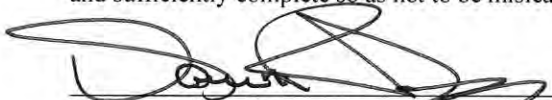
THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:

(Check all that apply.)

- Exhibit A – General Information
- Exhibit B – Financial and Performance Information
- Exhibit C – Project-Specific Information
- Exhibit D – Past Project Experience
- Exhibit E – Past Project Experience (Continued)

CONTRACTOR CERTIFICATION

The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.



July 22, 2021

Organization's Authorized Representative Signature

Date

Damon Jones, Vice President

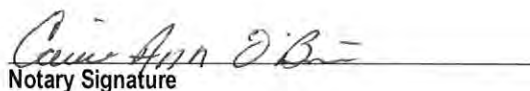
Printed Name and Title

NOTARY

State of: North Carolina

County of: Wake

Signed and sworn to before me this 22nd


Notary Signature



My commission expires: November 2, 2022

Init.



AIA Document A305™ – 2020 Exhibit A

General Information

This Exhibit is part of the Contractor’s Qualification Statement, submitted by
Muter Construction
and dated the 22nd day of July
in the year 2021
(In words, indicate day, month and year.)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

§ A.1 ORGANIZATION

§ A.1.1 Name and Location

§ A.1.1.1 Identify the full legal name of your organization.

Muter Construction, LLC

§ A.1.1.2 List all other names under which your organization currently does business and, for each name, identify jurisdictions in which it is registered to do business under that trade name.

N/A

§ A.1.1.3 List all prior names under which your organization has operated and, for each name, indicate the date range and jurisdiction in which it was used.

N/A

§ A.1.1.4 Identify the address of your organization’s principal place of business and list all office locations out of which your organization conducts business. If your organization has multiple offices, you may attach an exhibit or refer to a website.

111 East Vance Street
Zebulon, NC 27597

§ A.1.2 Legal Status

§ A.1.2.1 Identify the legal status under which your organization does business, such as sole proprietorship, partnership, corporation, limited liability corporation, joint venture, or other.

Limited Liability Corporation

.1 If your organization is a corporation, identify the state in which it is incorporated, the date of incorporation, and its four highest-ranking corporate officers and their titles, as applicable.

N/A

.2 If your organization is a partnership, identify its partners and its date of organization.

N/A

- .3 If your organization is individually owned, identify its owner and date of organization.

N/A

- .4 If the form of your organization is other than those listed above, describe it and identify its individual leaders:

Limited Liability Corporation

Beth Muter, CPA - Manager

John D. Muter - Member

§ A.1.2.2 Does your organization own, in whole or in part, any other construction-related businesses? If so, identify and describe those businesses and specify percentage of ownership.

No

§ A.1.3 Other Information

§ A.1.3.1 How many years has your organization been in business?

9

§ A.1.3.2 How many full-time employees work for your organization?

34

§ A.1.3.3 List your North American Industry Classification System (NAICS) codes and titles. Specify which is your primary NAICS code.

236220 Commercial and Institutional Building Construction

§ A.1.3.4 Indicate whether your organization is certified as a governmentally recognized special business class, such as a minority business enterprise, woman business enterprise, service disabled veteran owned small business, woman owned small business, small business in a HUBZone, or a small disadvantaged business in the 8(a) Business Development Program. For each, identify the certifying authority and indicate jurisdictions to which such certification applies.

Woman Business Enterprise - North Carolina DOA HUB Office

§ A.2 EXPERIENCE

§ A.2.1 Complete Exhibit D to describe up to four projects, either completed or in progress, that are representative of your organization's experience and capabilities.

§ A.2.2 State your organization's total dollar value of work currently under contract.

\$41,249,996

§ A.2.3 Of the amount stated in Section A.2.2, state the dollar value of work that remains to be completed:

\$23,260,000

§ A.2.4 State your organization's average annual dollar value of construction work performed during the last five years.

\$21,149,063

§ A.3 CAPABILITIES

§ A.3.1 List the categories of work that your organization typically self-performs.

Concrete, Masonry, Carpentry, Demolition, Site Work, Roofing

§ A.3.2 Identify qualities, accreditations, services, skills, or personnel that you believe differentiate your organization from others.

Muter Construction is ranked among the top woman-owned firms in the RTP region and was honored with the Carolinas AGC Pinnacle Award for Best Building project in 2019. Owners, Beth and John Muter, bring more than 60 years of combined construction expertise to lead a team of dedicated construction professionals.

§ A.3.3 Does your organization provide design collaboration or pre-construction services? If so, describe those services.

Muter Construction has extensive experience in preconstruction estimating services and offers a comprehensive approach which includes: document review, constructability review, MEP analysis & BIM, cost models & estimates, value analysis & management, scheduling, trade contractor prequalification, HUB, MWBE, local contractor outreach and optimized bid packaging.

§ A.3.4 Does your organization use building information modeling (BIM)? If so, describe how your organization uses BIM and identify BIM software that your organization regularly uses.

Muter Construction partners with Raleigh Mechanical for BIM and utilizes AutoCAD MEP and Navisworks, exporting files to Revit.

§ A.3.5 Does your organization use a project management information system? If so, identify that system.

Procore

§ A.4 REFERENCES

§ A.4.1 Identify three client references:

(Insert name, organization, and contact information)

Joe Fenton, UNC Chapel Hill Facilities CPO 1090 Chapel Hill, NC 27599 (919) 962-1215 joe.fenton@fac.unc.edu

Jessi Reutter, Country Club of Landfall 800 Sun Runner Place Wilmington, NC 28405 (913) 687-3459

jessi.reutter@countrycluboflandfall.com

Cathy Hardison, Wilson Arts Council 124 Nash St., N Wilson, NC 27893 (252) 291-4329 cathy@wilsonarts.com

§ A.4.2 Identify three architect references:

(Insert name, organization, and contact information)

Louis Cherry, AIA Louis Cherry Architecture 222 North Bloodworth St. Raleigh, NC 27601 (919) 971-2299

louis@louischerry.com

John Murray, AIA BMH Architects 514 Market St. Wilmington, NC 28401 (910) 619-6902 murray@bmharch.com

Mark Humienny, AIA IBI Architects 421 Fayetteville St. Raleigh, NC 27601 (919) 851-4211

mark.humienny@ibigroup.com

§ A.4.3 Identify one bank reference:

(Insert name, organization, and contact information)

John Thomas, BB&T Now Truist 6612 Knightdale Blvd. Knightdale, NC 27545 (919)-266-8600

johnthomas@bbandt.com

§ A.4.4 Identify three subcontractor or other trade references:

(Insert name, organization, and contact information)

Brian Allen Precision Walls 1230 NE Maynard Road Cary, NC 27513 (919) 832-0380 ballen@precisionwalls.com

Ricky Rouse Triple R Electric PO Box 6116 Kinston, NC 28501 (252) 523-3558 rwrouse@tripler.com

Bob Chandler Chandler Concrete PO Box 131 Burlington, NC 27215 (336) 226-1181

bob.chandler@chandlerconcrete.com

 **AIA** Document A305™ – 2020 Exhibit B
Financial and Performance Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by
Muter Construction
and dated the 22nd day of July
in the year 2021
(In words, indicate day, month and year.)

This document has important
legal consequences.
Consultation with an attorney is
encouraged with respect to its
completion or modification.

§ B.1 FINANCIAL

§ B.1.1 Federal tax identification number:

461323818

§ B.1.2 Attach financial statements for the last three years prepared in accordance with
Generally Accepted Accounting Principles, including your organization's latest balance
sheet and income statement. Also, indicate the name and contact information of the firm
that prepared each financial statement.

Financial Statements are attached under separate cover and should be treated in a confidential manner.

§ B.1.3 Has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or
management, been the subject of any bankruptcy proceeding within the last ten years?

No

§ B.1.4 Identify your organization's preferred credit rating agency and identification information.

*(Identify rating agency, such as Dun and Bradstreet or Equifax, and insert your organization's identification number or
other method of searching your organization's credit rating with such agency.)*

Dun and Bradstreet
078670859

§ B.2 DISPUTES AND DISCIPLINARY ACTIONS

§ B.2.1 Are there any pending or outstanding judgments, arbitration proceedings, bond claims, or lawsuits against your
organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of
the individuals listed in Exhibit A, Section 1.2, in which the amount in dispute is more than \$75,000?

(If the answer is yes, provide an explanation.)

No

§ B.2.2 In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common
ownership or management:

(If the answer to any of the questions below is yes, provide an explanation.)

.1 failed to complete work awarded to it?

No

.2 been terminated for any reason except for an owners' convenience?

No

.3 had any judgments, settlements, or awards pertaining to a construction project in which your organization was responsible for more than \$75,000?

No

.4 filed any lawsuits or requested arbitration regarding a construction project?

No

§ B.2.3 In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management; or any of the individuals listed in Exhibit A Section 1.2:

(If the answer to any of the questions below is yes, provide an explanation.)

.1 been convicted of, or indicted for, a business-related crime?

No

.2 had any business or professional license subjected to disciplinary action?

No

.3 been penalized or fined by a state or federal environmental agency?

No



AIA[®]

Document A305™ – 2020 Exhibit C

Project Specific Information

This Exhibit is part of the Contractor’s Qualification Statement, submitted by
Muter Construction
and dated the 22nd day of July
in the year 2021
(In words, indicate day, month and year.)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

PROJECT:

(Name and location or address.)

City of Greenville New Fire/Rescue Station No. 7
4170 Bayswater Road
Winterville, NC 28590

CONTRACTOR’S PROJECT OFFICE:

(Identify the office out of which the contractor proposes to perform the work for the Project.)

Muter Construction Headquarters
111 East Vance Street
Zebulon, NC 27597

TYPE OF WORK SOUGHT

(Indicate the type of work you are seeking for this Project, such as general contracting, construction manager as constructor, design-build, HVAC subcontracting, electrical subcontracting, plumbing subcontracting, etc.)

General Contractor

CONFLICT OF INTEREST

Describe any conflict of interest your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A Section 1.2, may have regarding this Project.

N/A

§ C.1 PERFORMANCE OF THE WORK

§ C.1.1 When was the Contractor’s Project Office established?

November 12, 2012

§ C.1.2 How many full-time field and office staff are respectively employed at the Contractor’s Project Office?

34

§ C.1.3 List the business license and contractor license or registration numbers for the Contractor’s Project Office that pertain to the Project.

North Carolina General Contractors License 73095

Init.

§ C.1.4 Identify key personnel from your organization who will be meaningfully involved with work on this Project and indicate (1) their position on the Project team, (2) their office location, (3) their expertise and experience, and (4) projects similar to the Project on which they have worked.

Benito Avila-Ambriz (1) Project Manager (2) Zebulon (3) BS Mechanical Engineering ECU with 5 years of experience (4) Greenville Fire Station #1 Expansion; Wilson Arts Center Renovation; SPC Mechanical Maintenance Facility; UNC Carroll Hall Renovation Alan Turgeon (1) Superintendent (2) Zebulon (3) 40 years experience (4) Greenville Fire Station #1 Expansion; NCSU CVM Equine Expansion; UNC East Elevator Upgrades; NCNG Benson new construction.

§ C.1.5 Identify portions of work that you intend to self-perform on this Project.

Concrete, Masonry, Carpentry, Demolition, Site Work, Roofing

§ C.1.6 To the extent known, list the subcontractors you intend to use for major portions of work on the Project.

Subcontractors will be selected once pricing is completed.

§ C.2 EXPERIENCE RELATED TO THE PROJECT

§ C.2.1 Complete Exhibit D to describe up to four projects performed by the Contractor's Project Office, either completed or in progress, that are relevant to this Project, such as projects in a similar geographic area or of similar project type. If you have already completed Exhibit D, but want to provide further examples of projects that are relevant to this Project, you may complete Exhibit E.

§ C.2.2 State the total dollar value of work currently under contract at the Contractor's Project Office:

\$41,249,996

§ C.2.3 Of the amount stated in Section C.2.2, state the dollar value of work that remains to be completed:

\$23,260,000

§ C.2.4 State the average annual dollar value of construction work performed by the Contractor's Project Office during the last five years.

\$21,149,063

§ C.2.5 List the total number of projects the Contractor's Project Office has completed in the last five years and state the dollar value of the largest contract the Contractor's Project Office has completed during that time.

Total Number of Projects: 151

Largest Contract: PWC Fleet Maintenance Facility - \$6,410,000

§ C.3 SAFETY PROGRAM AND RECORD

§ C.3.1 Does the Contractor's Project Office have a written safety program?

Yes

§ C.3.2 List all safety-related citations and penalties the Contractor's Project Office has received in the last three years.

None

§ C.3.3 Attach the Contractor's Project Office's OSHA 300a Summary of Work-Related Injuries and Illnesses form for the last three years.

§ C.3.4 Attach a copy of your insurance agent's verification letter for your organization's current workers' compensation experience modification rate and rates for the last three years.

§ C.4 INSURANCE

§ C.4.1 Attach current certificates of insurance for your commercial general liability policy, umbrella insurance policy, and professional liability insurance policy, if any. Identify deductibles or self-insured retentions for your commercial general liability policy.

§ C.4.2 If requested, will your organization be able to provide property insurance for the Project written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis?

Yes

§ C.4.3 Does your commercial general liability policy contain any exclusions or restrictions of coverage that are prohibited in AIA Document A101-2017, Exhibit A, Insurance A.3.2.2.2? If so, identify.

No

§ C.5 SURETY

§ C.5.1 If requested, will your organization be able to provide a performance and payment bond for this Project?

Yes

§ C.5.2 Surety company name:

Intact Insurance Surety

§ C.5.3 Surety agent name and contact information:

Marsh & McLennan Agency
Angela Buckner (Agent) 5605 Carnegie Blvd., Suite 300 Charlotte, NC 28209 (704) 367-3471
angela.buckner@marshmma.com

§ C.5.4 Total bonding capacity:

\$100,000,000 aggregate; \$50,000,000 single project

§ C.5.5 Available bonding capacity as of the date of this qualification statement:

\$70,000,000



AIA Document A305™ – 2020 Exhibit D

Contractor's Past Project Experience

	1	2	3	4
PROJECT NAME	Greenville Fire Station #1	PWC Fleet Maintenance Facility	WROC, Soabar Renovations	Transit Facility Fuel Fare Station
PROJECT LOCATION	500 South Green Street Greenville, NC 27834	955 Old Wilmington Rd. Fayetteville, NC	300 W. Washington St. Greensboro, NC	219 Fayetteville St. Raleigh, NC
PROJECT TYPE	Bay Expansion	Renovation, Addition	Renovation	Expansion, System Upgrades
OWNER	City of Greenville Kevin Mulligan 252-329-4520	City of Fayetteville PWC Kevin Howell 910-223-4361	City of Greensboro Butch Shumate 336-373-2489	City of Raleigh Bill Black 919-996-5578
ARCHITECT	Stewart Cooper Newell Jody Jackson 704-865-6311	IBI Group Mark Humienny 919-851-4211	Lauren Beverly CPL 336-373-9800	IBI Group Mark Humienny 919-851-4211
CONTRACTOR'S PROJECT EXECUTIVE	Brad Milne	John Muter	John Muter	John Muter
KEY PERSONNEL (include titles)	Benito Avila-Ambriz, Project Manager Alan Turgeon, Superintendent	Chad Oliver, Project Manager Chad Linder, Superintendent	Bryan Braddy, Project Manager TJ Johnson, Superintendent	Bryan Braddy Bob Howard
PROJECT DETAILS	Contract Amount \$621,500 Completion Date 7/29/2021 % Self-Performed Work 35%	Contract Amount \$6,410,000 Completion Date 8/28/2020 % Self-Performed Work 30%	Contract Amount \$5,467,860 Completion Date 1/31/2020 % Self-Performed Work 37%	Contract Amount \$1,935,807 Completion Date 5/1/2019 % Self-Performed Work 28%
PROJECT DELIVERY METHOD	<input checked="" type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input checked="" type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input checked="" type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input checked="" type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS	N/A	N/A	N/A	N/A

Init.



AIA[®] Document A305[™] – 2020 Exhibit E

Contractor's Past Project Experience, Continued

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

Init.

OSHA's Form 300A (Rev. 01/2004) Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	0	0	0
(G)	(H)	(I)	(J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
0	0
(K)	(L)

Injury and Illness Types						
Total number of...	(1) Injury	(2) Skin Disorder	(3) Respiratory Condition	(4) Poisoning	(5) Hearing Loss	(6) All Other Illnesses
(M)	0	0	0	0	0	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA, Office of Statistics, Room N-3644, 200 Constitution Ave., NW, Washington, DC 20210. Do not send the completed forms to this office.

Establishment information			
Your establishment name	Muter Construction, LLC		
Street	100 North Arendell Avenue	City	Zebulon
State	NC	Zip	27597
Industry description (e.g., Manufacture of motor truck trailers)	General Contractor		
Standard Industrial Classification (SIC), if known (e.g., SIC 3715)	OR: North American Industrial Classification (NAICS), if known (e.g., 336212)		
2 3 6 2 0 0			
Employment information			
Annual average number of employees	28		
Total hours worked by all employees last year	51,132		
Sign here			
Knowing falsifying this document may result in a fine.			
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.			
Beth Muter Company executive			CEO Title 1-31-19 Date
919-404-8330			Phone

OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

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Number of Cases

Total number of deaths _____ Total number of cases with job transfer or restriction _____ Total number of cases away from work _____ Total number of other recordable cases _____

Number of Days

Total number of days away from work _____ Total number of days of job transfer or restriction _____

Injury and Illness Types

Total number of... (M) _____
 (1) Injury _____ (4) Poisoning _____
 (2) Skin Disorder _____ (5) Hearing Loss _____
 (3) Respiratory Condition _____ (6) All Other illnesses _____

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA, Office of Statistics, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.



Establishment information

Your establishment name Muter Construction, LLC
 Street 111 E Vance Street
 City Zebulon State NC Zip 27597
 Industry description (e.g., Manufacture of motor truck trailers)
 General Contractor

Standard Industrial Classification (SIC), if known (e.g., SIC 3715)

OR North American Industrial Classification (NAICS), if known (e.g., 336212)
 2 3 6 2 0 0

Employment information

Annual average number of employees 28
 Total hours worked by all employees last year 57,888

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Boeth Muter
 Company executive
 919-404-8330
 CEO
 1-31-20
 Title Date

OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases			
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	0 (H)	0 (I)	0 (J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
0 (K)	0 (L)

Injury and Illness Types						
Total number of... (M)	(1) Injury	(2) Skin Disorder	(3) Respiratory Condition	(4) Poisoning	(5) Hearing Loss	(6) All Other Illnesses
0	0	0	0	0	0	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.



Year 2020

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OMB no. 1218-0178

Establishment Information

Your establishment name Muter Construction, LLC
 Street 111 E Vance Street
 City Zebulon State NC Zip 27597
 Industry description (e.g., Manufacture of motor truck trailers)
General Contractor
 Standard Industrial Classification (SIC), if known (e.g., SIC 3715)
 OR North American Industrial Classification (NAICS), if known (e.g., 339212)
2 3 6 2 0 0

Employment Information

Annual average number of employees 38
 Total hours worked by all employees last year 59,446

Sign here
 Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.
Deon R. Hunter Title CEO
 Company executive
919-404-8330 Phone
1-8-2021 Date

Marsh & McLennan Agency LLC
Mid-Atlantic Region
5605 Carnegie Blvd., Suite 300
Charlotte, North Carolina 28209
+1 704 365 6213
www.mma-midatlantic.com



January 7, 2021

Muter Construction, LLC
111 E. Vance Street
Zebulon, NC 27597

Re: Experience Rating History

To Whom It May Concern:

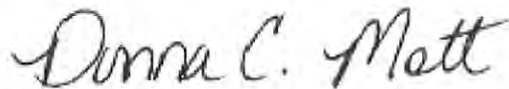
Please accept this letter as evidence of the Experience Modification Rating history for Muter Construction, LLC. Their experience rating history, as calculated by the North Carolina Rate Bureau (NCRB), for the current and prior four years is as follows:

01/01/2021 - 01/01/2022	1.25
01/01/2020 - 01/01/2021	1.26
01/01/2019 - 01/01/2020	1.41
01/01/2018 - 01/01/2019	0.97
01/01/2017 - 01/01/2018	1.00

The current experience mod of 1.25 comes from one auto accident and not because of frequency. This is not reflective of their jobsite safety standards, as they have had no jobsite work comp claims in the history of the company. As this claim falls out of their calculation next year, we estimate that their mod will fall below 1.0 for 2022.

If you have any questions, please contact our office.

Sincerely,

A handwritten signature in black ink that reads 'Donna C. Mott'.

Donna C. Mott, CIC
Service Account Manager
704-376-3479
Donna.mott@marshmma.com

Marsh & McLennan Agency LLC
Mid-Atlantic Region
5605 Carnegie Blvd., Suite 300
Charlotte, North Carolina 28209
+1 704 365 6213
www.mma-midatlantic.com



January 7, 2021

Muter Construction, LLC
111 E. Vance Street
Zebulon, NC 27597

Re: Experience Rating History

To Whom It May Concern:

Please accept this letter as evidence of the Experience Modification Rating history for Muter Construction, LLC. Their experience rating history, as calculated by the North Carolina Rate Bureau (NCRB), for the current and prior four years is as follows:

01/01/2021 - 01/01/2022	1.25
01/01/2020 - 01/01/2021	1.26
01/01/2019 - 01/01/2020	1.41
01/01/2018 - 01/01/2019	0.97
01/01/2017 - 01/01/2018	1.00

The current experience mod of 1.25 comes from one auto accident and not because of frequency. This is not reflective of their jobsite safety standards, as they have had no jobsite work comp claims in the history of the company. As this claim falls out of their calculation next year, we estimate that their mod will fall below 1.0 for 2022.

If you have any questions, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Donna C. Mott". The signature is written in a cursive, flowing style.

Donna C. Mott, CIC
Service Account Manager
704-376-3479
Donna.mott@marshmma.com



United

Community Bank ©

City of Greenville
C/O/ Stewart-Cooper-Newell Architects
Re: Fire/Rescue Purchasing Bid No. 21-21-42
1500 Beatty Street
Greenville, NC 27834

To Whom it May Concern,

UCB has been doing business with Muter Construction since 2014. A most recent average balance is \$3,701,945. They have a \$500k line of credit that renews annually. They have an excellent rating. Please contact Brian Johnson at 984-239-6064 with any questions or concerns.

I certify that the preceding and referenced information is accurate to the best of my knowledge and belief.

Thanks,

Brian Johnson
Vice President

License Year

2021

License No.

73095

North Carolina

Licensing Board for General Contractors

This is to Certify That:

Muter Construction, LLC
Zebulon, NC

is duly registered and entitled to practice

General Contracting

Limitation: Unlimited
Classification: Building

until

December 31, 2021

when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

January 1, 2021

This certificate may not be altered.



[Signature]
Chairman

[Signature]
Secretary-Treasurer

MUTER CONSTRUCTION



July 22, 2021

City of Greenville
C/O Stewart-Cooper-Newell
500 S. Green Street
Greenville, North Carolina 27834

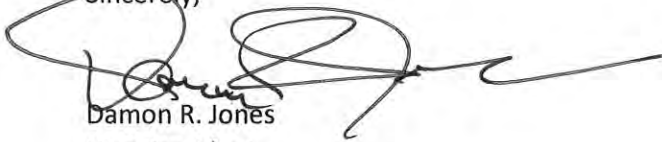
Reference: Prequalification for the New Fire/Rescue Station No. 7

Subject: Muter Construction LLC Financial Documentation

The attached financial documents are supplied for the purposes of evaluation in the selection of contractors on the referenced project. These documents are sensitive and Confidential.

We ask that dissemination be limited to those required for the purpose stated. We also ask that the documents be destroyed or returned to Muter Construction LLC once the evaluation has been completed.

Sincerely,



Damon R. Jones
Vice President
Muter Construction, LLC

Independent Accountants' Review Report

Members

Muter Construction, LLC
Zebulon, North Carolina

We have reviewed the accompanying consolidated financial statements of Muter Construction, LLC and Affiliate (the "Company"), which comprise the consolidated balance sheet as of December 31, 2018, and the related consolidated statements of operations, capital and cash flows for the year then ended, and the related notes to the consolidated financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of company management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the consolidated financial statements as a whole. Accordingly, we do not express such an opinion.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement whether due to fraud or error.

Accountants' Responsibility

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the consolidated financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

Accountants' Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying consolidated financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

Other Matter

The accompanying supplementary information included in pages 14 through 19 is presented for the purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the consolidated financial statements. The supplementary information has been subjected to the review procedures applied in our review of the basic consolidated financial statements. We are not aware of any material modifications that should be made to the supplementary information. We have not audited the supplementary information and do not express an opinion on such information.

Dixon Hughes Goodman LLP

**Winston-Salem, North Carolina
April 5, 2019**

Muter Construction, LLC and Affiliate
Consolidated Balance Sheet
December 31, 2018

ASSETS

Current assets:

Cash and cash equivalents	\$	2,261,638
Contract receivables		2,720,287
Retainage receivable		962,345
Other current assets		23,640
Costs and estimated earnings in excess of billings on uncompleted contracts		<u>473,420</u>
Total current assets		6,441,330
Property and equipment, net of accumulated depreciation		1,253,304
Property and equipment, net of accumulated depreciation - VIE		<u>291,863</u>

Total assets \$ 7,986,497

Muter Construction, LLC and Affiliate
Consolidated Balance Sheet
December 31, 2018

LIABILITIES AND CAPITAL

Current liabilities:

Accounts payable	\$	2,294,907
Retainage payable		735,445
Accrued expenses and other current liabilities		86,142
Current portion of long-term debt		235,384
Current portion of long-term debt - VIE		74,409
Billings in excess of costs and estimated earnings on uncompleted contracts		<u>1,222,895</u>
Total current liabilities		4,649,182
Long-term debt, less current portion		539,547
Long-term debt - VIE, less current portion		<u>125,236</u>
Total liabilities		5,313,965
Capital:		
Controlling interest		2,666,122
Noncontrolling interest in consolidated entity		<u>6,410</u>
Total capital		<u>2,672,532</u>
Total liabilities and capital	\$	<u><u>7,986,497</u></u>

**Muter Construction, LLC and Affiliate
Consolidated Statement of Operations
Year Ended December 31, 2018**

Revenues earned	\$ 18,519,504
Cost of revenues earned	<u>15,703,215</u>
Gross profit	2,816,289
Selling, general and administrative expenses	<u>881,091</u>
Profit from operations	1,935,198
Other income (expense):	
Investment income	12,042
Other income	5,033
Interest expense	<u>(31,513)</u>
	(14,438)
Net income before noncontrolling interest	1,920,760
Noncontrolling interest in loss of affiliate	<u>(1,692)</u>
Net income attributable to controlling interest	<u>\$ 1,919,068</u>



Independent Accountants' Review Report

Members
Muter Construction, LLC
Zebulon, North Carolina

We have reviewed the accompanying financial statements of Muter Construction, LLC (the "Company"), which comprise the balance sheet as of December 31, 2019, and the related statements of operations, capital and cash flows for the year then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of company management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

Accountants' Responsibility

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

Accountants' Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

Change in Accounting Principles

As discussed in Note 1 to the financial statements, the Company changed its method of accounting for revenue recognition in accordance with Accounting Standards Codification Topic 606, Revenue from Contracts with Customers, effective January 1, 2019. The Company adopted this standard using a modified retrospective approach. Our conclusion is not modified with respect to this matter.

As discussed in Note 1 to the financial statements, in 2019, the Company changed its method of accounting for variable interest entities under common control. Our conclusion is not modified with respect to this matter.

Supplementary Information

The accompanying supplementary information included in pages 15 through 18 is presented for the purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements. The supplementary information has been subjected to the review procedures applied in our review of the basic financial statements. We are not aware of any material modifications that should be made to the supplementary information. We have not audited the supplementary information and do not express an opinion on such information.

Dixon Hughes Goodman LLP

Winston-Salem, North Carolina
April 20, 2020

Muter Construction, LLC
Balance Sheet
December 31, 2019

ASSETS

Current assets:

Cash and cash equivalents	\$ 3,644,118
Contract receivables	4,244,269
Related party receivable	98,803
Other current assets	6,225
Contract assets	<u>2,181,178</u>

Total current assets 10,174,593

Property and equipment, net of accumulated depreciation 1,673,559

Total assets \$ 11,848,152

LIABILITIES AND CAPITAL

Current liabilities:

Accounts payable	\$ 3,573,816
Retainage payable	1,656,118
Accrued expenses and other current liabilities	85,045
Current portion of long-term debt	309,299
Contract liabilities	<u>1,136,587</u>

Total current liabilities 6,760,865

Long-term debt, less current portion 584,905

Total liabilities 7,345,770

Capital 4,502,382

Total liabilities and capital \$ 11,848,152

Muter Construction, LLC
Statement of Operations
Year Ended December 31, 2019

Revenues earned	\$ 29,315,658
Cost of revenues earned	<u>26,773,190</u>
Gross profit	2,542,468
Selling, general and administrative expenses	<u>463,001</u>
Profit from operations	2,079,467
Other income (expense):	
Investment income	35,972
Other income	6,881
Interest expense	<u>(46,270)</u>
	(3,417)
Net income	<u><u>\$ 2,076,050</u></u>

Muter Construction, LLC
Statement of Capital
Year Ended December 31, 2019

Capital, December 31, 2018	\$	2,666,122
Net income		2,076,050
Distributions		<u>(239,790)</u>
Capital, December 31, 2019	\$	<u><u>4,502,382</u></u>

Independent Accountants' Review Report

Members
Muter Construction, LLC
Zebulon, NC

We have reviewed the accompanying financial statements of Muter Construction, LLC (the "Company"), which comprise the balance sheet as of December 31, 2020, and the related statements of operations, capital and cash flows for the year then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of company management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

Accountants' Responsibility

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

Accountants' Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.



Supplementary Information

The accompanying supplementary information included in pages 14 through 17 is presented for the purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements. The supplementary information has been subjected to the review procedures applied in our review of the basic financial statements. We are not aware of any material modifications that should be made to the supplementary information. We have not audited the supplementary information and do not express an opinion on such information.

Dixon Hughes Goodman LLP

Winston-Salem, NC
April 7, 2021

Muter Construction, LLC
 Balance Sheet
 December 31, 2020

ASSETS

Current assets:

Cash and cash equivalents	\$ 8,169,203
Contract receivables	3,584,786
Contract assets	2,080,467
Other current assets	9,380

Total current assets 13,843,836

Property and equipment, net of accumulated depreciation 2,094,689

Related party receivable 267,014

Total assets \$ 16,205,539

LIABILITIES AND CAPITAL

Current liabilities:

Accounts payable	\$ 6,287,360
Retainage payable	1,790,448
Accrued expenses and other current liabilities	85,466
Paycheck Protection Program loan	429,100
Current portion of long-term debt	269,412
Contract liabilities	2,361,282

Total current liabilities 11,223,068

Long-term debt, less current portion 456,281

Total liabilities 11,679,349

Capital 4,526,190

Total liabilities and capital \$ 16,205,539

Muter Construction, LLC
Statement of Operations
Year Ended December 31, 2020

Revenues earned	\$ 38,945,315
Cost of revenues earned	<u>35,647,332</u>
Gross profit	3,297,983
Selling, general and administrative expenses	<u>1,356,424</u>
Profit from operations	1,941,559
Other income (expense):	
Investment income	31,817
Other income	5,253
Interest expense	<u>(26,320)</u>
	10,750
Net income	<u>\$ 1,952,309</u>

Muter Construction, LLC
Statement of Capital
Year Ended December 31, 2020

Capital, December 31, 2019	\$	4,502,382
Net income		1,952,309
Distributions		<u>(1,928,501)</u>
Capital, December 31, 2020	\$	<u><u>4,526,190</u></u>



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Resolution Making Certain Findings and Determinations Regarding the Financing of Public Improvements Pursuant to an Installment Financing Agreement up to \$21,000,000 and to Reimburse Certain Expenditures from the Proceeds of the Financing

Explanation: In anticipation of the acquisition, construction, and equipping of several capital projects, there is a need to finance the costs associated with these projects by means of an installment financing arrangement not to exceed \$21,000,000. These projects include the following:

- Radio equipment for the City's public safety departments
- Construction of Fire Station #7
- Construction of a bay extension at Fire Station #1
- Improvements to the Eppes Recreation Center
- Construction of a new community pool at Thomas Foreman Park
- Construction and development of Wildwood Park Phase I and II

A reimbursement resolution has been included for the radio equipment project, allowing for reimbursement of any expenses incurred within the project between August 1st and the closing of the debt issuance, for an amount not to exceed \$3,500,000. Previous reimbursement resolutions for the other five projects have already been completed, with the resolutions for the Fire Station #7 construction and the Fire Station #1 bay extension being approved during the January 6, 2020 City Council meeting, and the community pool construction, Eppes building improvements, and Wildwood construction and development being approved during the November 9, 2020 City Council meeting.

Once approved, a public hearing will be conducted at a future, upcoming Council meeting with the anticipation of the application for financing to be considered by the Local Government Commission at their September 14, 2021 meeting.

Fiscal Note: The installment financing agreements will not exceed \$21,000,000. Additionally, the reimbursement resolution provides for up to \$3,500,000 in expenses for the public safety radios to be reimbursed with the proceeds of debt. Annual, recurring appropriations to fund the debt service payments related to the future installment financing is included in the Council adopted Fiscal Year 2021-22 General Fund Budget.

Recommendation: Approve the attached resolutions authorizing the filing of an application with the

Local Government Commission for approval of the installment financing arrangement, in preparation for the notice of a public hearing, and request the Local Government Commission approve the installment financing arrangement and proposed financing

ATTACHMENTS

 [LGC_Findings_Call_PH-Greenville_2021_IFA.DOC](#)

The City Council of the City of Greenville, North Carolina, held a regular meeting at the Council Chambers of the City Hall located at 200 West 5th Street in Greenville, North Carolina, the regular place of meeting, at 6:00 p.m. on August 9, 2021.

Present: Mayor P.J. Connelly, presiding, and Council Members

Absent: Council Members

Also Present: _____

* * * * *

_____ introduced the following resolution the title of which was read and a copy of which had been distributed to each Council Member:

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF PUBLIC IMPROVEMENTS PURSUANT TO AN INSTALLMENT FINANCING AGREEMENT, REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT, CALLING A PUBLIC HEARING THEREON AND DECLARING THE CITY'S INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS OF THE FINANCING

BE IT RESOLVED by the City Council (the "City Council") of the City of Greenville, North Carolina (the "City") as follows:

Section 1. The City Council does hereby find and determine as follows:

(a) There exists in the City a need to finance the costs of acquisition, construction and equipping of improvements for the City including new radio equipment for the City's public safety departments, a new fire station and the expansion of existing fire stations, community

center improvements, a new municipal swimming pool, park improvements and other City improvements. The improvements are herein referred to collectively as the “Project.”

(b) After due consideration, the City has determined to enter into an installment financing arrangement in an aggregate principal amount not to exceed \$21,000,000 to provide funds, together with any other available funds, to pay (i) the costs of the Project and (ii) certain financing costs associated therewith.

(c) The City may carry out the financing arrangement under an Installment Financing Agreement with a financial institution to be selected by the City, pursuant to which the financial institution will advance to the City amounts sufficient, together with any other available funds, to pay the costs of the Project, together with associated financing costs, and the City will repay the advancement in installments with interest, or through the issuance by the City of its Limited Obligation Bonds.

(d) In order to secure its obligations under the financing arrangement, the City will execute and deliver a deed of trust (the “Deed of Trust”) granting a lien on the site of the site or sites of some portion of the Project, together with all improvements and fixtures located or to be located thereon.

(e) It is in the best interest of the City to enter into the installment financing arrangement and the Deed of Trust in that such transaction will result in providing financing for the Project in an efficient and cost effective manner.

(f) Entering into the installment financing arrangement is preferable to a general obligation bond and revenue bond issue in that (i) the City does not have the constitutional authority to issue non-voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution because the City has not retired a sufficient amount of debt in the

preceding fiscal year to issue a sufficient amount of general obligation bonds for the financing of the Project without an election; (ii) the nature of the Project does not allow for the issuance of revenue bonds to finance the costs of the Project; (iii) the cost of the Project exceeds the amount to be prudently provided from currently available appropriations and unappropriated fund balances; (iv) the circumstances existing require that funds be available to commence the Project as soon as practicable and the time required for holding an election for the issuance of voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution and the Local Government Bond Act will delay the commencement of acquisition and construction of the Project by several months; and (v) there can be no assurances that the Project would be approved by the voters and the necessity of such Project dictates that the Project be financed by a method that assures that such Project will be acquired and constructed in an expedient manner.

(g) It has been determined by the City Council that the financing of the Project through an installment financing arrangement is reasonably comparable to the costs of issuing general obligation bonds or notes or other available methods of financing and is acceptable to the City Council.

(h) Counsel to the City will render an opinion to the effect that the proposed installment financing arrangement is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina.

(i) The debt management policies of the City have been carried out in strict compliance with law, and the City is not in default under any obligation for repayment of borrowed money.

(j) No tax rate increase is anticipated to be necessary to pay the payments due under the financing arrangement.

Section 2. The City Council hereby authorizes and approves the filing of an application with the Local Government Commission for approval of the installment financing arrangement and requests the Local Government Commission to approve the installment financing arrangement and the proposed financing in connection therewith.

Section 3. The City Council hereby fixes 6:00 p.m. on August 23, 2021 in Council Chambers of the City Hall located at 200 West 5th Street in Greenville, North Carolina, as the hour, day and place for the public hearing on such installment financing agreement. If the City Council determines not to hold a meeting on said date, the public hearing will be rescheduled to the next meeting of the City Council at 6:00 p.m. on September 9, 2021 in Council Chambers. The City Council hereby directs the City Clerk to publish notice of such public hearing once in not later than the 10th day before said date.

Section 4. (a) Section 1.150-2 of the Treasury Regulations (the “Regulations”) prescribes specific procedures which will be applicable to certain bonds or notes issued by or on behalf of the City including, without limitation, a requirement that the City declare its official intent to reimburse certain expenditures with proceeds of debt to be incurred by the City prior to, or within sixty (60) days of, payment of the expenditures to be reimbursed.

(b) The City intends to advance its own funds in order to pay certain capital costs (the “Original Expenditures”) relating to the new radio equipment for the City’s public safety departments (the “Project”).

(c) The City reasonably expects to reimburse itself for the Original Expenditures from the proceeds of debt to be incurred by the City.

(d) \$3,500,000 is the maximum principal amount of debt expected to be incurred for the purpose of paying the costs of the Project.

(e) This declaration of official intent is made pursuant to Section 1.150-2 of the Treasury Regulations to expressly declare the official intent of the City to reimburse itself from the proceeds of debt to be hereinafter incurred by the City for certain expenditures paid by the City on or after the date which is sixty (60) days prior to the date hereof.

(f) The funds heretofore advanced or to be advanced by the City to pay the Original Expenditures are or will be available only on a temporary basis, and do not consist of funds that were otherwise earmarked or intended to be used by the City to permanently finance the Original Expenditures.

(g) All Original Expenditures to be reimbursed by the City were paid no more than sixty (60) days prior to, or will be paid on or after the date of, this declaration of official intent, except with respect to certain amounts incurred before such 60-day period not exceeding 20% of the issue price of the proceeds of the debt to be hereinafter incurred which are expended for “preliminary expenditures” within the meaning of Section 1.150-2 of the Treasury Regulations (the “Preliminary Expenditures”). The City understands that, except for the Preliminary Expenditures, such reimbursement must occur not later than eighteen (18) months after the later of (a) the date the Original Expenditures were paid and (b) the date the Project is placed in service or abandoned, but in no event more than three (3) years after the Original Expenditures were paid.

Section 5. This resolution shall take effect immediately upon its adoption.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Valerie Shiuwegar, City Clerk of the City of Greenville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City at a regular meeting held on August 9, 2021, as it relates in any way to the passage of the foregoing resolution relating to an installment financing arrangement by said City and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said City this 9th day of August, 2021.

[SEAL]

City Clerk



City of Greenville, North Carolina

Meeting Date: 08/09/2021

Title of Item: Budget Ordinance Amendment #1 to the 2021-22 City of Greenville Budget (Ordinance #21-035), Special Revenue Grant Fund (Ordinance #11-003), and Capital Projects Funds (Ordinance #17-024)

Explanation: Attached for consideration at the August 9, 2021 City Council meeting is an ordinance amending the 2021-22 City of Greenville Budget (Ordinance #21-035), Special Revenue Grant Fund (Ordinance #11-003), and Capital Projects Funds (Ordinance #17-024).

For ease of reference, a footnote has been added to each line item of the Budget Ordinance Amendment, which corresponds to the explanation below:

<u>Item</u>	<u>Justification</u>	<u>Funds Amended</u>	<u>Net Adjustment</u>
A	To reclassify capital expenses within the General Fund as well as recognize transfers within the designated Capital Project funds.	General IT Cap Proj PW Cap Proj	\$425,000
B	To appropriate funding received from the Christopher Reeves Grant for Thomas Foreman Park improvements	Grants Spec Rev	\$14,525
C	Recognize revenue from the NC Department of Cultural Resources for operating expenses at A Time for Science	General	\$23,788
D	To recognize prior fiscal year 2020-21 encumbrances and carryovers in the City's Operating Funds.	General Fund FIP VRF Transit Fleet Stormwater	\$2,535,696 \$570,546 \$2,421,298 \$14,950 \$93,338 \$639,289
E	To designate occupancy tax reserves to fund the CVA Sports Commission for Fiscal Year 2021-22 as included in the Adopted CVA Budget.	Occupancy Tax	\$425,000
F	To appropriate debt proceeds for the purchase of public safety radios	F/R Cap Proj	\$3,297,415

Fiscal Note:

The Budget Ordinance Amendment affects the following funds:

<u>Fund</u>	<u>2021-22 Original Budget</u>	<u>Amendment #1</u>	<u>2021-22 Budget per Amendment #1</u>
General	\$89,677,021	\$2,559,484	\$92,236,505
Debt Service	6,971,244	-	6,971,244
Public Transportation (Transit)	3,264,114	14,950	3,279,064
Fleet Maintenance	5,295,550	93,338	5,388,888
Sanitation	8,040,606	159,701	8,200,307
Stormwater	8,760,601	639,289	9,399,890
Housing	1,884,784	-	1,884,784
Health Insurance	14,258,648	-	14,258,648
Vehicle Replacement	4,837,486	2,421,298	7,258,784
Facilities Improvement	1,000,000	570,546	1,570,546
Special Revenue Grants	11,398,892	14,525	11,413,417
Public Works Capital Projects	57,526,644	225,000	57,751,644
Fire/Rescue Capital Projects	7,178,700	3,297,415	10,476,115
Occupancy Taxes	3,029,590	425,000	3,454,590
IT Capital Projects	3,545,991	200,000	3,745,991

Recommendation: Approve Budget Ordinance Amendment #1 to the 2021-2022 City of Greenville Budget (Ordinance #21-035), Special Revenue Grant Fund (Ordinance #11-003), and Capital Projects Funds (Ordinance #17-024).

ATTACHMENTS

 [FY 21-22 Budget_Amendment_1.pdf](#)

ORDINANCE NO. 21-
CITY OF GREENVILLE, NORTH CAROLINA
Ordinance (#1) Amending the 2021-22 Budget (Ordinance #21-035),
Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Funds (Ordinance #17-024)

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section I: Estimated Revenues and Appropriations. General Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	Budget Amendment #1					2021-22 Budget per Amend #1
	2021-22 Original Budget	A	C	D	Total Amend #1	
ESTIMATED REVENUES						
Property Tax	\$ 36,938,258	\$ -	\$ -	\$ -	\$ -	\$ 36,938,258
Sales Tax	22,913,854	-	-	-	-	22,913,854
Video Prog. & Telecom. Service Tax	783,083	-	-	-	-	783,083
Rental Vehicle Gross Receipts	170,995	-	-	-	-	170,995
Utilities Franchise Tax	6,700,000	-	-	-	-	6,700,000
Motor Vehicle Tax	1,734,556	-	-	-	-	1,734,556
Other Unrestricted Intergov't	877,968	-	-	-	-	877,968
Powell Bill	2,123,924	-	-	-	-	2,123,924
Restricted Intergov't Revenues	665,800	-	-	-	-	665,800
Licenses, Permits and Fees	4,454,521	-	-	-	-	4,454,521
Rescue Service Transport	3,200,000	-	-	-	-	3,200,000
Parking Violation Penalties, Leases,	150,000	-	-	-	-	150,000
Other Sales & Services	314,868	-	-	-	-	314,868
Other Revenues	575,374	-	23,788	-	23,788	599,162
Interest on Investments	744,389	-	-	-	-	744,389
Transfers In GUC	6,579,431	-	-	-	-	6,579,431
Appropriated Fund Balance	750,000	-	-	2,535,696	2,535,696	3,285,696
Total Revenues	\$ 89,677,021	\$ -	\$ 23,788	\$ 2,535,696	\$ 2,559,484	\$ 92,236,505
APPROPRIATIONS						
Mayor/City Council	\$ 497,262	\$ -	\$ -	\$ 8,945	\$ 8,945	\$ 506,207
City Manager	2,654,866	-	-	537,302	537,302	3,192,168
City Clerk	245,793	-	-	1,772	1,772	247,565
City Attorney	646,989	-	-	-	-	646,989
Human Resources	3,156,053	-	-	(35,008)	(35,008)	3,121,045
Information Technology	3,207,103	-	-	75,068	75,068	3,282,171
Engineering	4,704,978	38,047	-	142,964	181,011	4,885,989
Fire/Rescue	15,554,918	820,812	-	196,715	1,017,527	16,572,445
Financial Services	2,779,246	-	-	60,490	60,490	2,839,736
Recreation & Parks	7,150,376	56,302	-	224,268	280,570	7,430,946
Police	27,722,804	308,495	-	374,027	682,522	28,405,326
Public Works	5,966,938	184,342	23,788	797,052	1,005,182	6,972,120
Planning & Development	3,075,093	-	-	152,101	152,101	3,227,194
OPEB	600,000	-	-	-	-	600,000
Capital Improvements	2,214,148	(2,214,148)	-	-	(2,214,148)	-
Contingency	50,000	-	-	-	-	50,000
Indirect Cost Reimbursement	(1,950,887)	-	-	-	-	(1,950,887)
Total Appropriations	\$ 78,275,680	\$ (806,150)	\$ 23,788	\$ 2,535,696	\$ 1,753,334	\$ 80,029,014
OTHER FINANCING SOURCES						
Transfers to Other Funds	\$ 11,401,341	\$ 806,150	\$ -	\$ -	\$ 806,150	\$ 12,207,491
Total Other Financing Sources	\$ 11,401,341	\$ 806,150	\$ -	\$ -	\$ 806,150	\$ 12,207,491
Total Approp & Other Fin Sources	\$ 89,677,021	\$ -	\$ 23,788	\$ 2,535,696	\$ 2,559,484	\$ 92,236,505

Section II: Estimated Revenues and Appropriations. Vehicle Replacement Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	D	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Sale of Property	\$ 234,775	\$ -	\$ -	\$ 234,775
Transfer from Sanitation Fund	1,181,380	-	-	1,181,380
Transfer from Other Funds	474,340	-	-	474,340
Transfer from General Fund	2,946,991	-	-	2,946,991
Other Revenues	-	-	-	-
Appropriated Fund Balance	-	2,421,298	2,421,298	2,421,298
Total Revenues	\$ 4,837,486	\$ 2,421,298	\$ 2,421,298	\$ 7,258,784
APPROPRIATIONS				
Vehicle Replacement Fund	\$ 4,837,486	\$ 2,421,298	\$ 2,421,298	\$ 7,258,784
Total Appropriations	\$ 4,837,486	\$ 2,421,298	\$ 2,421,298	\$ 7,258,784

Section III: Estimated Revenues and Appropriations. Special Revenue Grant Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	B	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 8,523,977	\$ 14,525	\$ 14,525	\$ 8,538,502
CARES Act Funding	1,560,518	-	-	1,560,518
Transfer From General Fund	1,241,743	-	-	1,241,743
Transfer From Pre-1994 Entitlement	27,419	-	-	27,419
Transfer from Other Funds	45,235	-	-	45,235
Total Revenues	\$ 11,398,892	\$ 14,525	14,525	\$ 11,413,417
APPROPRIATIONS				
Personnel	\$ 2,253,228	\$ -	\$ -	\$ 2,253,228
Operating	5,113,067	14,525	14,525	5,127,592
Capital Outlay	2,006,385	-	-	2,006,385
Transfers	27,419	-	-	27,419
COVID-19	1,560,518	-	-	1,560,518
Rural Housing Recovery Grant	350,000	-	-	350,000
Environmental Enhancement Grant	88,275	-	-	88,275
Total Appropriations	\$ 11,398,892	\$ 14,525	\$ 14,525	\$ 11,413,417

Section IV: Estimated Revenues and Appropriations. Fire/Rescue Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	F	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Debt Proceeds	\$ 6,698,700	\$ 3,297,415	\$ 3,297,415	\$ 9,996,115
Sale of Property	480,000	-	-	480,000
Total Revenues	<u>\$ 7,178,700</u>	<u>\$ 3,297,415</u>	<u>\$ 3,297,415</u>	<u>\$ 10,476,115</u>
APPROPRIATIONS				
Fire Station #7	\$ 6,463,500	\$ -	\$ -	\$ 6,463,500
Fire Station #1 Bay Extension	715,200	-	-	715,200
Public Safety Radio Replacement	-	3,297,415	3,297,415	3,297,415
Total Appropriations	<u>\$ 7,178,700</u>	<u>\$ 3,297,415</u>	<u>\$ 3,297,415</u>	<u>\$ 10,476,115</u>

Section V: Estimated Revenues and Appropriations. IT Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	A	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Transfers from Other Funds	\$ 3,545,991	\$ 200,000	\$ 200,000	\$ 3,745,991
Total Revenues	<u>\$ 3,545,991</u>	<u>\$ 200,000</u>	<u>\$ 200,000</u>	<u>\$ 3,745,991</u>
APPROPRIATIONS				
Transfer to Other Funds	\$ 2,500,000	\$ -	\$ -	\$ 2,500,000
IT Hardware Upgrade	1,045,991	200,000	200,000	1,245,991
Total Appropriations	<u>\$ 3,545,991</u>	<u>\$ 200,000</u>	<u>\$ 200,000</u>	<u>\$ 3,745,991</u>

Section VI: Estimated Revenues and Appropriations. Facilities Improvement Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Original Budget	D	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Transfer from General Fund	\$ 1,000,000	\$ -	\$ -	\$ 1,000,000
Appropriated Fund Balance	-	570,546	570,546	570,546
Total Revenues	<u>\$ 1,000,000</u>	<u>\$ 570,546</u>	<u>\$ 570,546</u>	<u>\$ 1,570,546</u>
APPROPRIATIONS				
Facilities Improvement Fund	\$ 1,000,000	\$ 570,546	\$ 570,546	\$ 1,570,546
Total Appropriations	<u>\$ 1,000,000</u>	<u>\$ 570,546</u>	<u>\$ 570,546</u>	<u>\$ 1,570,546</u>

Section VII: Estimated Revenues and Appropriations. Fleet Maintenance Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Original Budget	D	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Fuel Markup	\$ 1,380,000	\$ -	\$ -	\$ 1,380,000
Labor Fees	1,556,550	-	-	1,556,550
Parts Markup	1,551,500	-	-	1,551,500
Commercial Labor Markup	805,000	-	-	805,000
Other Revenues	2,500	-	-	2,500
Appropriated Fund Balance	-	93,338	93,338	93,338
Total Revenues	<u>\$ 5,295,550</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 5,388,888</u>
APPROPRIATIONS				
Fleet Maintenance	\$ 5,295,550	\$ 93,338	\$ 93,338	\$ 5,388,888
Total Appropriations	<u>\$ 5,295,550</u>	<u>\$ 93,338</u>	<u>\$ 93,338</u>	<u>\$ 5,388,888</u>

Section VIII: Estimated Revenues and Appropriations. Transit Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	D	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Grant Income	\$ 2,976,444	\$ -	\$ -	\$ 2,976,444
Bus Fare Ticket Sales	287,670	-	-	287,670
Appropriated Fund Balance	-	14,950	14,950	14,950
Total Revenues	<u>\$ 3,264,114</u>	<u>\$ 14,950</u>	<u>\$ 14,950</u>	<u>\$ 3,279,064</u>
APPROPRIATIONS				
Public Transportation	\$ 3,264,114	\$ 14,950	\$ 14,950	\$ 3,279,064
Total Appropriations	<u>\$ 3,264,114</u>	<u>\$ 14,950</u>	<u>\$ 14,950</u>	<u>\$ 3,279,064</u>

Section IX: Estimated Revenues and Appropriations. Sanitation Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Original Budget	D	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Refuse Fees	\$ 7,752,106	\$ -	\$ -	\$ 7,752,106
Cart and Dumpster	100,000	-	-	100,000
Other Revenues	188,500	-	-	188,500
Appropriated Fund Balance	-	159,701	159,701	159,701
Total Revenues	\$ 8,040,606	\$ -	\$ -	\$ 8,200,307
APPROPRIATIONS				
Sanitation Service	\$ 8,040,606	\$ 159,701	\$ 159,701	\$ 8,200,307
Total Appropriations	\$ 8,040,606	\$ 159,701	\$ 159,701	\$ 8,200,307

Section X: Estimated Revenues and Appropriations. Stormwater Management Utility Fund, of Ordinance #21-035 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	D	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Utility Fee	\$ 7,374,199	\$ -	\$ -	\$ 7,374,199
Appropriated Fund Balance	1,386,402	639,289	639,289	2,025,691
Total Revenues	\$ 8,760,601	\$ 639,289	\$ 639,289	\$ 9,399,890
APPROPRIATIONS				
Stormwater Management	\$ 8,760,601	\$ 639,289	\$ 639,289	\$ 9,399,890
Total Appropriations	\$ 8,760,601	\$ 639,289	\$ 639,289	\$ 9,399,890

Section XI: Estimated Revenues and Appropriations. Occupancy Tax Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Original Budget	E	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Occupancy Tax	\$ -	\$ -	\$ -	\$ -
Transfer from Public Works Capital Projects	1,866,866	-	-	1,866,866
Transfer from Debt Service	1,162,724	-	-	1,162,724
Transfer from General Fund	-	-	-	-
Transfer from Other Funds	-	-	-	-
Appropriated Fund Balance	-	425,000	425,000	425,000
Total Revenues	\$ 3,029,590	\$ 425,000	\$ 425,000	\$ 3,454,590
APPROPRIATIONS				
Occupancy Tax Reserves	\$ 3,029,590	\$ -	\$ -	\$ 3,029,590
Payments to CVB	-	425,000	425,000	425,000
Total Appropriations	\$ 3,029,590	\$ 425,000	\$ 425,000	\$ 3,454,590

Section XII: Estimated Revenues and Appropriations. Public Works Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2021-22 Revised Budget	A	Total Amend #1	2021-22 Budget per Amend #1
ESTIMATED REVENUES				
Occupancy Tax	\$ 422,610	\$ -	\$ -	\$ 422,610
Transfers from Other Funds	21,331,989	225,000	225,000	21,556,989
Other Income	2,731,245	-	-	2,731,245
Spec Fed/State/Loc Grant	24,698,934	-	-	24,698,934
Bond Proceeds	6,200,000	-	-	6,200,000
Appropriated Fund Balance	2,141,866	-	-	2,141,866
Total Revenues	\$ 57,526,644	\$ 225,000	\$ 225,000	\$ 57,751,644
APPROPRIATIONS				
Stantonsburg Rd./10th St Con Project	\$ 6,194,950	\$ -	\$ -	\$ 6,194,950
Computerized Traffic Signal System	8,883,151	-	-	8,883,151
Sidewalk Development Project	1,405,540	-	-	1,405,540
GTAC Project	9,336,917	-	-	9,336,917
Energy Efficiency Project	777,600	-	-	777,600
King George Bridge Project	1,341,089	-	-	1,341,089
Energy Savings Equipment Project	2,591,373	-	-	2,591,373
Convention Center Expansion Project	4,718,000	-	-	4,718,000
Pedestrian Improvement Project	210,761	-	-	210,761
Street Lights & Cameras	1,526,225	225,000	225,000	1,751,225
F/R Station 3 Parking Lot	139,551	-	-	139,551
F/R Station 2 Bay Expansion	244,655	-	-	244,655
Parking Lot Enhancements	81,903	-	-	81,903
Street Improvements Project	14,282,805	-	-	14,282,805
Safe Routes to School	1,409,463	-	-	1,409,463
Imperial Demolition	238,464	-	-	238,464
Parking Deck Safety Improvements	135,000	-	-	135,000
Transfer to Other Funds	1,866,866	-	-	1,866,866
Transfer to General Fund	559,764	-	-	559,764
Transfer to Street Improvement	1,002,567	-	-	1,002,567
Transfer to Recreation & Parks Capital	30,000	-	-	30,000
Transfer to Facilities Improvement	300,000	-	-	300,000
Transfer to IT Capital Projects Fund	250,000	-	-	250,000
Total Appropriations	\$ 57,526,644	\$ 225,000	\$ 225,000	\$ 57,751,644

Section XIII: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed:

Adopted this 9th day of August, 2021

P. J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk